

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

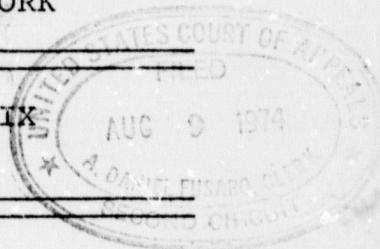
-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

253
DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(27) - Pages 3426 to 3598



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2 UNITED STATES OF AMERICA

3 vs.

4 CARMINE TRAMUNTI, et al.

5

6 New York, February 23, 1974,

7 10:15 a.m.

8 Trial resumed.

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10 - -

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(In open court; jury not present.)

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THE COURT: I would like to talk on strictly legal questions today, right now.

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My apologies first for appearing late. The judges' elevators in this building were manufactured by Otis Elevator Company but they are shut off on Saturdays. Now I have to travel on the Millar elevators which all of you generally travel on. I recognize I am 15 minutes late, and if perchance you attorneys should appear in some other courtroom before some other judge, you can cite this record as to the efficiency of the elevator system in this building.

There was an offer yesterday of the photographs, a group of photographs, and also a photograph. Those photographs, either the group or the particular one,

1 rka

2 will not be necessary to introduce

3 Do you have any objection?

4 MR. LEONARD: No.

5 THE COURT: Then I am going to direct the jury

6 to certain narcotics which were seized in connection
7 with the execution of the bench warrant issued by an officer, Springer,
8 also known as Hank. Those narcotics will be admitted,
9 but only as to the substantive count and as to nothing
10 else.

11 As perhaps you can see, I am working in my notes
12 here.

13 There was an offer of proof yesterday as to
14 certain heroin seized from the defendant Pugliese.
15 That seizure, from what I understand, occurred immedi-
16 ately prior to his charge in the state court as to
17 possession of narcotics. I don't know how much is in-
18 volved, I don't particularly care.

19 Because of circumstances which I had to
20 recognize, I permitted at the beginning of this
21 case the fact that the defendant Pugliese was convicted
22 and sent to jail; I permitted that into evidence. At
23 the time I did not know about the seizure of narcotics,
24 and I certainly did not know at all about the possibility
25 of those narcotics being offered here.

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

260

... your government's statement that in order to gain
the right to live freely in America, the fact that
you have had the privilege will be made known to the
public. I would like to tell you, Sir, I have no intention of
ever going to jail again. That he went to jail because of a
political conviction.

As far as I am concerned, as far as this jury
is concerned right now, he could have gone to jail for the
same reason that Ingliest went to jail, for drunk
driving, but I feel -- I am not denying that the narcotics
are relevant or that the seizure is relevant -- I just
feel that the weight to be given to that as opposed
to the prejudice to the defendant is such that I am
not going to take a chance on permitting that into evi-
dence. It is not coming.

17 Now, I believe -- maybe I am wrong -- I
18 believe I have disposed of all of the outstanding legal
19 questions with the exception of the million dollars.

20 Does anybody here want to jog my memory if I
21 - forgot something.

MR. DOWD: Not as to a legal question.

Particularly something that has been raised before.

THE COURT: Go ahead.

MR. POWD: It has come to my attention this

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and so on under Sections 171 and 174, and I intend to go into the aiding and abetting, and I might read one or two, I might do, I might intend to read one or two or three counts; so some of the elements which must be proved and go into the indictment, and thereafter go into what constitutes aiding and abetting.

After that I will go into the substantive charges after, I think it is, May, 1971. I will look it up, the present law, I intend to read one count there. I may read them all, but I doubt it right now.

After that I will go into the elements to be proved. In other words, basically the same type as the old Sections 173, 174, aiding and abetting will be included.

I then intend to summarize the evidence by witness. I don't mean I am going to go through every witness. I am going to go through the major witnesses, and then as I am going through I will point out whatever corroboration there might be and whatever the lack of corroboration and whatever points that were made on cross examination, whatever that may be.

After that I intend to go into the defendants' contentions. I will start off with a general defendant's contention, that the defendant is entitled to re-

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and more on the presentation. In addition, however,
it's easier to do so to go into individual defendant's
contentions.

I know that the defendant Richman, number one,
don't know, but I believe might be, defendant Richman, number eight,
intends to argue, one, that he has a complete alibi for
the period charged in that he was working at the Yonkers
Raceway and, two, that in any event, he was out of the
conspiracy at some period in 1971. That I can guess
from the arguments of Mr. Richman.

I don't know what the other defendants
are going to contend, but if you want your particular
contentions put in, particularized as to you, as to
your client, I am going to have to have it.

As to the question of time, on this one I have
to be hard and fast. I want all requests to charge,
particularly the defendants' contentions, by Wednesday at
10 o'clock.

I think you all recognize that I spend my
Sundays working on the charge and it is tough enough to
do just that. Whatever help you can be, you have to
be of help on time. Wednesday at 10 o'clock I want
those requests, and I mean all of them.

I would like to know before the end of today

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how much time the defendants expect to take in presenting their defense and in what order it is going to be. The reason for this, I don't want to go around the room and say, "Mr. Siegel, do you intend to put in a defense?" or "Mr. Warner, do you intend to put in a defense?" and go right down the row of lawyers. That is the last thing I want to do. I have tried to avoid that, for example, on cross examination.

I want you to let me know by the end of the day who actually intends to put on a defense and what order you want to do it in.

I have a guess as to who is going to put in a defense and who is not, but it is strictly a guess.

Mr. Warner, I assume you will. I don't know if you will or you won't.

MR. WARNER: Yes, I will.

THE COURT: My problem is, I want to be able do it in order so that it makes sense to you; and I mean not only to you, Mr. Warner, but to all defense attorneys and defendants.

For a lot of reasons people may want to go first or people may want to go last. I don't want to have to impose my will on your judgment. If I have to I will, but I prefer you fellows get together and discuss

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2 it and work it out among yourselves.

3 I am going about down to the end of my notes.

4 I got a wire from -- that Mrs. Ethel Leopold
5 King, called and said her husband is still ill.

6 Mr. Pollak, would you be good enough to
7 cover for Mr. King.

8 MR.- POLLAK: Certainly.

9 MR. SUNDEN: Did I understand your Honor
10 the other day with regard to the marshaling of the
11 facts that your Honor intends -- that you will take suggested
12 requests to charge on that, in that area.

13 THE COURT: Mr. Sunden, let's be very honest.
14 I work hard and I will accept all the help I can get. If
15 you want that translated into Mother Goose language, the
16 answer is yes.

17 MR. PANZER: Your Honor, with respect to
18 count 1, which is the conspiracy count, it runs with the
19 old law and the new law. I ask if you will give the
20 jury special findings of fact as to particular defendants
21 as to which part of the conspiracy or both, whatever they
22 come under? I think it will be a problem.

23 THE COURT: As of now I think I will have
24 to make that request, unless we have some kind of agree-
25 ment that we will go all in the new law or old law.

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I will take no more than five minutes. I
will do it and let me rope off, out the jury in the box
and we will start. Hopefully today we will finish
with the government's case. I suspect that the last
two or three witness will be those involved with the
mailing details.

Some counsel yesterday made some remarks
about the million dollars. I understand that some today
would like to make remarks about it, but I will tell you
right now: I want to restrict it to enlightenment and
not heat; nor do I want one counsel to stand up and
say something that somebody else has just said.

We have had more than extensive argument on
this issue and we have had briefs filed. I think Mr.
Lopez filed two briefs and a letter.

MR. LOPEZ: That is correct, your Honor.

THE COURT: I think you confessed you typed
them up yourself.

MR. LOPEZ: Yes, your Honor.

THE COURT: I have read those things. While
you may think I have a short memory, think about it just
for a moment or two, then dismiss it from your mind.

MR. LOPEZ: I never had it in my mind.

THE COURT: I am not suggesting you did.

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of one of her people did, however,

Answer. No, it is not correct.

MR. PHILLIPS: Yes, your Honor, I do.

have any further questions of Agent _____

THE COURT: Mr. Lopen, would you be good enough to ascertain what defense wish to cross examine Mr. Nolan? -- Not right now. All right, that is why I am giving you the five minutes. Then I will work out the luncheon problem with the jury. That is among other little problems that are detailed to the court.

... MR. WARNER: When your Honor indicated you
were going to give us the rest of the charge --

THE COURT: I said I would give you the outline of the rest of the charge. That is the best I can do right now. I haven't written it.

MR. PANZER: Your Honor, since there is a time limit on the contentions, would your Honor accept the contentions if they are printed out rather than having them typed?

THE COURT: Sure. In fact, if you want to make just one copy I will Xerox the copy and give it to the government. Absolutely.

T will be recessed about five minutes. You
recess. Please yourselves up and we will go from there.

(Recess.)

THE COURT: You may proceed.

6. J O L A N D R E S E N T A R Y R E S U M E D .

7. THE COURT. All right, Mr. Lopez.

8. CROSS EXAMINATION

9. BY MR. LOPEZ:

10. Q Agent Nolan, good morning. My name is Frank
11. Lopez and I am the attorney for one of the defendants on
12. trial.

13. Agent Nolan, were you present at an interview
14. of the informer Harry Pannirello where his interview and
15. interrogation was recorded?

16. A Yes, I was.

17. Q Have you ever been shown Government's Exhibit
18. 3569A, a transcript consisting of 109 pages? Have you
19. ever been shown that transcript?

20. A - Yes, I was shown a transcript of some of the
21. tapes.

22. Q Anywhere in that transcript, is there any
23. mention of the out-of-court photographic identification
24. of Joseph DiNapoli in that transcript?

25. A No.

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..... I believe a fact, Agent Hogan, in this
organization consisting of an interview of 109 trans-
cripts and, you know, referring to Government's Exhibits 35
the one is no mention of the name Joseph DiNapoli?

A That is correct.

THE COURT: You meant 109 pages?

MR. LOPEZ: Yes, your Honor.

Q When the informant Pannirello identified
DiNapoli from a photograph shown to him of DiNapoli did
you make any written information on the photograph of the
date the fact DiNapoli was identified?

A No.

Q Did you make any written memoranda of any kind
with regard to the out-of-court identification of DiNapoli
by the informant Pannirello?

A No.

Q You prepared, I believe, a typewritten note in
connection with your conversations with the witness or in-
formant Pannirello, isn't that correct?

A That is correct.

Q I show you Government's Exhibits 3567, 3568 and
3569. That is a 17-page document, is it not?

A That is correct.

THE COURT: You showed him three documents.

ALL THREE WITNESSES
RECORDED ON THIS PAGE

MR. MCGRAW: Thank you very much. Question.

A Yes, I do this so.

Q About 12 pages.

A That is right.

Q You took this from handwritten notes, isn't that correct?

A Correct.

Q Do you have these handwritten notes available?

A No.

Q Did you turn them over to the government?

A No.

Q Did you destroy the notes?

A Yes, I did.

Q After you typed this document, did you compare this document with your notes?

A No, I did not.

Q Did you read the document at all?

A Yes, I did.

Q After you read it did you turn the document over to the government?

A Yes, I eventually did.

Q Isn't it a fact after you turned over the document to the government a copy of this type of document

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2 was also given to the informant Pannirello?

3 A I am not definitely sure of that.

4 Q You don't know either way?

5 A No.

6 Q With regard to the house in the Bronx on
7 Bronxdale Avenue, I believe you indicated --

8 MR. LOPEZ: If you will bear with me a mo-
9 ment, your Honor.

10 Q -- that in the typewritten document you
11 prepared, Government's Exhibit 3567, you in fact indicated
12 on that document that the informant Pannirello had told
13 you that the house was on Randall Avenue. Isn't that
14 what you told us yesterday?

15 MR. PHILLIPS: I object to the reference
16 to the document. The document at this point is not in
17 evidence.

18 THE COURT: We will get that in a while.

19 Answer the question.

20 Q Is that a fact?

21 A Could you repeat the question?

22 Q Isn't it a fact yesterday Mr. Phillips
23 asked you whether you had made a mistake in the typing of
24 the document 3567 and placed Randall Avenue instead of
25 Bronxdale Avenue in the document? Didn't you say

1 rka Nolan-cross 3440

2 that?

3 A Yes, I did.

4 Q And it is your contention that the informant
5 Pannirello never told you Randall Avenue; he told you
6 Bronxdale Avenue?

7 A That is correct.

8 Q And that this was your mistake?

9 A That is correct.

10 Q I show you page 2561 of the trial record and
11 ask that you look at a question and answer by the wit-
12 ness Harry Pannirello.

13 MR. PHILLIPS: Your Honor, I object to this
14 line of questioning as improper.

15 THE COURT: All he is asking him to do is to
16 take a look at a piece of paper.

17 MR. PHILLIPS: I understand, but I still ob-
18 ject.

19 THE COURT: I will permit it.

20 -- Did you look at it?

21 THE WITNESS: Yes.

22 Q Does that refresh your recollection?

23 MR. PHILLIPS: I object.

24 THE COURT: As to what?

25 Q As to whether or not Pannirello was the one

2 that told you that the house was on Randall Avenue; does
3 it refresh your recollection as to that?

4 MR. PHILLIPS: I object. This witness
5 hasn't indicated that his recollection needs refreshing.

6 THE COURT: No.

7 A No. As far as my knowledge goes of it,
8 he told me Bronxdale and I wrote down Randall.

9 Q So the document doesn't refresh your recol-
10 lection?

11 A That is right.

12 Q You had numerous conversations with Mr. Phillips
13 and other members of his staff in connection with your
14 testimony here yesterday?

15 A Yes.

16 THE COURT: That question is kind of broad.

17 Q You spoke with Mr. Phillips in connection with
18 the testimony you were to give here yesterday, isn't that
19 correct?

20 A Yes, that is correct.

21 Q None of the questions caught you by surprise?

22 A That one did, because I never realized what I
23 had wrote in the report.

24 Q It was Mr. Phillips that brought it out to
25 you?

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Nolan-cross

3442

2 A. Sir, sir.

3 Q. And that was the day before you testified, is
4 that correct?

5 A. I don't remember the exact day, but it was this
6 week.

7 Q. The first time that this matter had come to
8 your attention was within the last week, is that correct?

9 A. Yes, to the best of my knowledge.

10 Q. And it is your testimony that as a result of
11 your conversation with Mr. Phillips your recollection
12 is now that it was Bronxdale that Pannirello indicated to you
13 and not Randall, isn't that correct?

14 A. That is correct.

15 MR. LOPEZ: Thank you very much. No
16 further questions.

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CROSS EXAMINATION

BY MR. POLLAK:

Q Mr. Nolan, I am just asking you a couple of questions in my second role as pinchhitter for Mr. King.

You also conducted debriefing and one or more interviews with a Government witness that testified here, Pasquale Provitera; is that correct?

A That's correct, sir.

Q How many interviews did you conduct with him?

A There were numerous. I wouldn't be able to give you an approximate -- for the sake of argument, maybe 20.

Q At least one of those was recorded on tape, a rather lengthy one; is that correct?

A -- That's correct.

Q In that interview that was recorded on tape or any of the other interviews that you had with the witness Provitera, did he ever tell you that he was present at a session at which narcotics were being cut or mixed and at which John Gamba was present?

A To the best of my knowledge, no.

MR. POLLAK: Thank you, sir.

THE COURT: Does anybody else wish to inquire?

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2 All right, Mr. Dowd.

3 CROSS EXAMINATION

4 BY MR. DOWD:

5 Q Agent Nolan, just referring back to the docu-
6 ments that Mr. Lopez had shown you in respect to your
7 interviews of Harry Pannirello, you say before you testi-
8 fied here today, you were shown those documents, correct?

9 A That's correct, yes, sir.

10 Q Did you find them to be substantially correct
11 in respect to what Mr. Pannirello had told you?

12 A Which documents are those now? The tran-
13 scripts or --

14 Q No, your reports of the interviews that you had
15 had, your typewritten reports.

16 A To a large extent, yes.

17 Q And that report had been prepared as a result
18 of a number of interviews with Mr. Pannirello; is that
19 correct?

20 A That's correct.

21 MR. DOWD: Thank you.

22 THE COURT: Is that it?

23 Does anybody else wish to inquire?

24 MR. PHILLIPS: Your Honor, I have a few ques-
25 tions on redirect.

2 THE COURT: All right, go-ahead....

3 DIRECT EXAMINATION

4 BY MR. PHILLIPS:

5 Q Agent Nolan, did you take Harry Pannirello to
6 Bronxdale Avenue and ask him to point out the house he was
7 talking about?

8 MR. LOPEZ: Objection, your Honor.

9 THE COURT: Sustained.

10 Q The photographs that you identified yesterday,
11 15 photographs from which Mr. Pannirello picked out
12 Mr. DiNapoli's photograph, did you keep those in your
13 possession from the time you showed them to Mr. Pannirello?

14 MR. LOPEZ: Objection.

15 THE COURT: Sustained.

16 Q What did you do with the photographs after you
17 showed them to Mr. Pannirello?

18 MR. LOPEZ: Objection.

19 THE COURT: Sustained.

20 MR. PHILLIPS: Your Honor, the Government offer
21 Government's Exhibit 3569 for identification, the tran-
22 script that was shown to Agent Nolan on cross-examination
23 by Mr. Lopez.

24 MR. LOPEZ: In behalf of DiNapoli, I have no
25 objection.

2 objection.

3 THE COURT: Does anybody have an objection?

4 MR. ROSENBERG: Can I see it, please.

5 May we have a side bar, your Honor?

6 THE COURT: Yes.

7 (At the side bar.)

8 MR. ROSENBERG: I think this problem arose
9 once before.

10 THE COURT: You offered it.

11 MR. ROSENBERG: Yes, and co-counsel apparently
12 thought there was something damaging at this point and he
13 objected. I think there is something here which might
14 be misunderstood. I'm objecting.

15 THE COURT: Sustained.

16 MR. PHILLIPS: Your Honor, may I ask the
17 basis of your Honor's ruling regarding the photographs?

18 I think Mr. Lopez opened the door.

19 THE COURT: The answer is no.

20 (In open court.)

21 MR. PHILLIPS: I believe Your Honor sustained
22 the objection to the Government's offer.

23 MR. LOPEZ: I object to that.

24 THE COURT: All right.

25 MR. PHILLIPS: The Government has no further

2 questions.

3 THE COURT: Step down.

4 --Call your next witness.

5 MR. PHILLIPS: May we approach the side bar,
6 your Honor?

7 THE COURT: Yes.

8 (At the side bar.)

9 MR. PHILLIPS: My next witness is Agent Moore,
10 who is in the witness room, but the interrogator is not
11 in the courtroom, Mr. Engel. Mr. Fortuin went to get
12 him.

13 I could call George Reilly, who is in my office,
14 but I think your Honor wants further argument on the
15 million dollars. Engel is Xeroxing some documents now.

16 MR. EPSTEIN: He should be done in a few
17 minutes?

18 MR. PHILLIPS: Yes.

19 THE COURT: All right.

20 (In open court.)

21 THE COURT: Ladies and gentlemen, we are going
22 to have a couple of minutes here. Those of you who are
23 addicted to nicotine may wish to go out and have smokes
24 and I'm going to ask the marshal to take you out. Every-
25 body else will remain in place.

2 (Jury left.)

3 YOUR COURT: Don't leave the courtroom. Those
4 counsel who are likewise addicted, however, can go off to
5 what is euphemistically referred to as the conference room,
6 on the side here, to have a cigarette.

7 (Recess.)

8 (Jury present.)

9 MR. ENGEL: The Government calls Fred Moore.

10 - - -
11 F R E D E. M O O R E , called as a witness by the
12 Government, being first duly sworn, testified as
13 follows:

14 MR. ENGEL: May I proceed, your Honor?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. ENGEL:

18 Q Mr. Moore, how are you employed?

19 A I'm a special agent for the Drug Enforcement
20 Administration.

21 Q How long have you been so employed?

22 A Two years.

23 Q Drawing your attention, Mr. Moore, to the date
24 of January 10th, 1973, were you on duty that evening?

25 A Yes, sir, I was.

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2 Q And what did your duties consist of?

3 A We were investigating violations of federal
4 narcotics laws.

5 MR. LOPEZ: Objection, your Honor.

6 THE COURT: I will permit it.

7 Q You may answer.

8 THE COURT: He has already answered.

9 Q And specifically, on that occasion, where
10 were you to start your duties that evening, if you recall,
11 roughly.

12 A Yes, sir. We were performing surveillance
13 in the State of New Jersey.

14 Q And on whom were you conducting surveil-
15 lance?

16 A Jimmy Provitera, Harold Annirello, John Pan-
17 nirello.

18 Q Had you ever surveilled any of these indi-
19 viduals prior to the date in question, January 10, 1973?

20 A Yes, sir, on January 8, 1973 we surveilled
21 Harold and John Pannirello.

22 Q Had you ever surveilled Provitera before?

23 A No, sir.

24 Q About what time did the surveillance begin, if
25 you recall?

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Moore-direct

3450

2 A Approximately 6 p.m.

3 Q Were you accompanied by any other agents or
4 were you alone or what?

5 A No, sir, there were several individuals out
6 there, Group Supervisor Smith, Special Agents Checkaway,
7 Buckley, Maguire, Shannon, Loller, Nolan and myself.

8 Q Was the surveillance conducted initially by
9 auto or on foot?

10 A Yes, sir, initially by auto.

11 Q Sometime after the surveillance began you re-
12 ceived a radio call from a federal agent?

13 A Yes, sir, I did.

14 Q What, if anything, as a consequence did you do
15 then?

16 A We began poving surveillance on a 1964 Ford
17 stationwagon.

18 Q What color was the stationwagon, if you recall?

19 A It was white.

20 Q Did you follow the car?

21 A Yes, sir, we did.

22 Q Where did you follow it to, if you recall?

23 A 1580 Pelham Parkway South, Bronx, New York.

24 Q What was located there?

25 A An apartment building.

2 Q When you arrived on Pelham Parkway South,
2 what happened then?

4 A The white stationwagon pulled over to the curb
5 and parked. The driver got out of the vehicle, walked
6 around the vehicle. He appeared to be looking from side
7 to side as if looking for someone.

8 Q Did you know who the driver of the car was?

9 A Not at that time, no, sir.

10 Q Did you thereafter come to know who the
11 driver of the car was?

12 A Yes, sir, he was later identified as Jimmy
13 Provitera.

14 Q After Mr. Provitera got out of his car what
15 did you observe?

16 A We observed him walking around the vehicle,
17 he was looking around the area.

18 Q Were you still in your car? Were you
19 finished?

20 A No, sir. I got out of my car at that point
21 in time. I took up a surveillance position on the roof
22 of a parking garage on the building.

23 Q From the roof of the apartment building
24 what did you then observe?

25 A I observed Mr. Provitera walking around his

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Moore-direct

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2 vehicle, looking from side to side, and I also observed
3 a 1967 Pontiac convertible driving through the area
4 that had been circling the block several times.

5 Q A 1967 Pontiac convertible. Do you recall
6 the color?

7 A Yes, sir. Yellow with a black top.

8 Q Did you observe Mr. Provitera at any time
9 leave the area?

10 A Yes, sir, approximately five minutes later he
11 drove from the area.

12 Q Did he return?

13 A Yes, he returned shortly after that.

14 Q What happened when he returned, if you recall?

15 A He parked in approximately the same location
16 as he was parked before. He got out of the vehicle and
17 walked to the corner of Pelham Parkway and Stillwell Avenue.
18 He met another individual there who was walking a large,
19 black great Dane dog. They had a conversation that
20 lasted for several minutes.

21 Q Did you recognize the individual with whom he
22 had the conversation?

23 A At that time, no, sir.

24 Q Have you come to know who that person was?

25 A Yes, sir, we did. That individual was Patrick

1 hpa5

Moore-direct

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2 Dilacio.

3 Q Now, after they met on the street can you
4 tell us what happened from your point of view from the
5 roof?

6 A Well, I moved from my location at the roof
7 and was standing back in the shadows near the sidewalk in
8 front of 1580 Pelham Parkway building. At that time they
9 continued in conversation, Mr. Provitera and Mr. Dilacio.

10 After that I noticed the same Pontiac convertible
11 I mentioned before pulling up and parking on the median
12 at Pelham Parkway.

13 Q Could you explain, please, to the court and jury
14 if you can, what the relationship is between Pelham Parkway
15 and Pelham Parkway South?

16 A Yes, sir. Pelham Parkway is a four-lane
17 highway, a major thoroughfare in the area. Pelham
18 Parkway North, Pelham Parkway South are service roads.

19 Q This yellow Pontiac convertible, you mentioned
20 that pulled up, from which of these roads did it pull
21 over onto the median you referred to?

22 A It was driving on Pelham Parkway proper.

23 Q And after it pulled up what did you observe,
24 if anything?

25 A I observed a white male get out of the

1 hpa Moore-direct

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2 Pontiac and raise the hood.

3 Q Did you observe any other vehicles at or about
4 this time in the neighborhood?

5 A Not at that immediate time, sir.

6 Shortly thereafter I noticed Mr. Provitera's
7 stationwagon leaving the area and immediately after that
8 I noted a 1968 American Motor sedan, green, it was
9 circling the block at 1580 Pelham Parkway.

10 Q How many times, if you know, did it circle the
11 block?

12 A It circled numerous times. Approximately
13 10.

14 Q ... After you saw Mr. Provitera leave the area
15 what did you do?

16 A I remained in my surveillance position for a
17 few moments to observe the American Motors sedan. I saw
18 it again as it was going down Pelham Parkway proper.
19 As it got near the point where the 1967 Pontiac convert-
20 ible was parked it slowed down, the Pontiac convertible
21 moved from its parked position on the median and was followed
22 by the American Motors dedan driving towards the Hutchin-
23 son River Parkway.

24 Q Did you thereafter have occasion to continue
25 surveillande on Mr. Provitera's automobile?

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Moore-direct

3455

2 A Yes, sir. Shortly after that I joined the
3 surveillance, and we followed it to Route 46, the Land-
4 mark Diner in Ridgefield, New Jersey.

5 Q Where were you located with relation to the
6 Landmark Diner, if you recall, once you got there?

7 A Yes, sir. I took up a surveillance position
8 across Route 46 on the other side of the highway.

9 Q Did you continue the surveillance position
10 shortly thereafter?

11 A Yes, sir.

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Moore-direct

3456

2 Q Now, Mr. Moore, you testified several times
3 about a 1967 yellow Pontiac convertible.

4 Drawing your attention to this past year,
5 1973, did you have occasion to see that same car again?

6 A Yes.

7 Q Tell us where you saw it.

8 A In the parking lot in back of the courthouse
9 at Foley Square.

10 Q This particular courthouse?

11 A Yes.

12 Q Do you recall when that was, roughly speaking?

13 A It was in the early part of December. It
14 was at the pretrial conference where Judge Duffy outlined
15 the rules and procedures to be followed in this trial.

16 MR. ELLIS: Objection.

17 THE COURT: What, to the rules I laid
18 down?

19 ALL right, it was at a pretrial conference.

20 Q Did you have occasion to observe who was in the
21 car at that time?

22 A Yes, I did.

23 MR. ELLIS: Objection.

24 Q Who was that?

25 MR. ELLIS: Objection.

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Moore-direct

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2 Q Who was that?

3 MR. ELLIS: Objection.

4 A Frank Russo and his wife.

5 MR. ENGEL: Was there an objection.?

6 THE COURT: I am sorry, I didn't hear it.

7 MR. DOWD: There was for the last two
8 questions.

9 THE COURT: I will permit it.

10 Q At the time you observed Mr. Russo and his
11 wife, were they in the car?

12 A Yes, sir. We observed them at the stop
13 sign. They were in the car. We observed them
14 when they got out of the vehicle in the parking lot.

15 Q Do you see Mr. Russo on the courtroom today?

16 A Yes, I do..

17 Q Would you stand up, please, and point him out
18 and tell us what he is wearing, if possible?

19 MR. DOWD: It is stipulated that the
20 agent knows Mr. Russo.

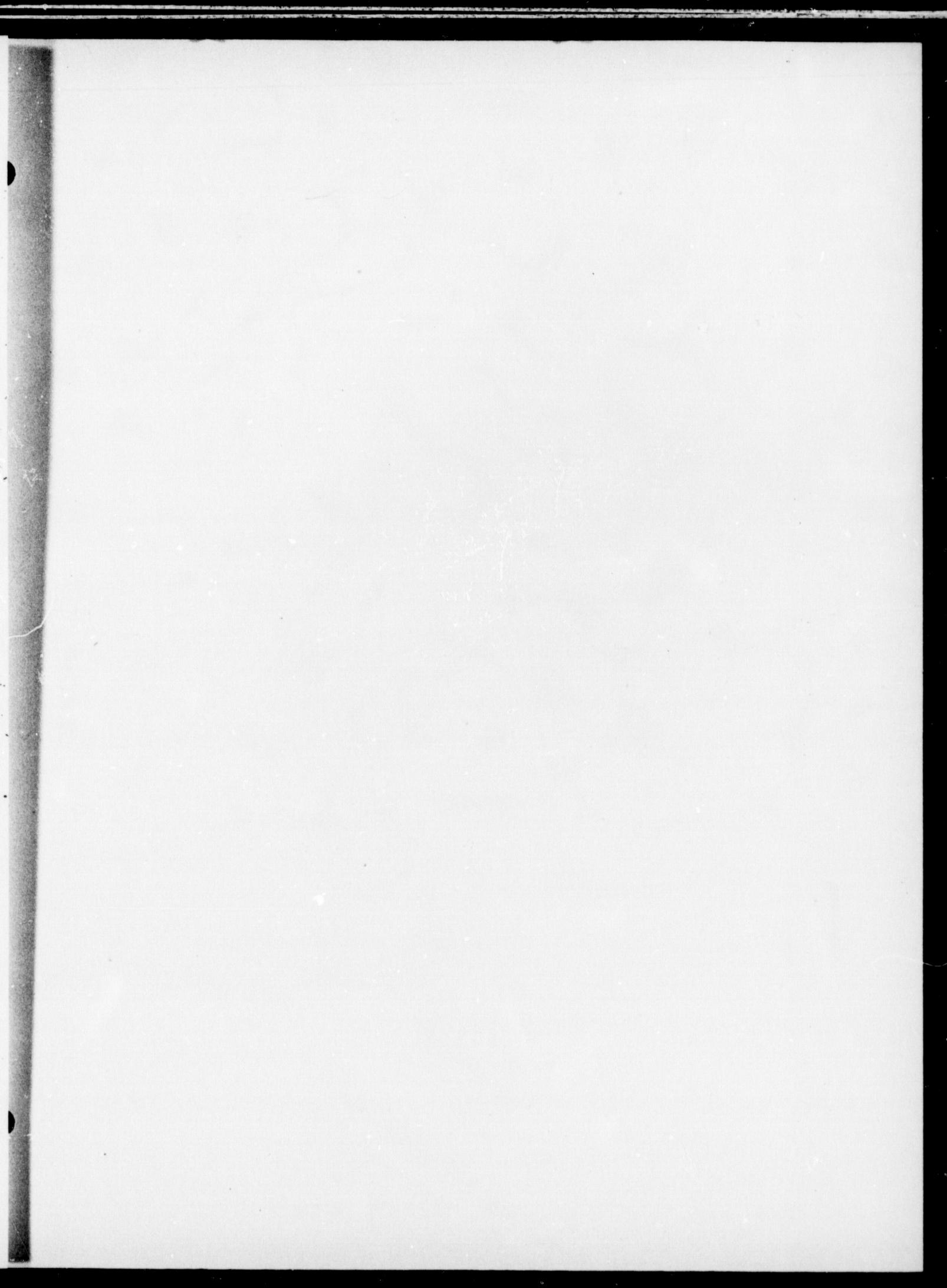
21 THE COURT: Okay, fine.

22 MR. ENGEL: May I have a moment?

23 THE COURT: Sure.

24 (Pause.)

25 Q Agent Moore, to your knowledge, was Harry



1 rka Moore-direct 3458
2 Pannirello ever asked by Agent Nolan what street
3 Joseph DiNapoli's girlfriend lived on?

4 MR. DOWD: Objection.

5 THE COURT: I will sustain it.

6 MR. ENGEL: No further questions.

7 THE COURT: Does anyone wish to inquire?

8 MR. DOWD: May we have a side-bar?

9 THE COURT: Surely.

10 (At the side bar.)

11 MR. DOWD: Your Honor, my motion is to
12 strike the testimony of Special Agent Moore in respect
13 to what he observed in December, 1973 in respect to a
14 parking lot behind this courthouse because it does not --
15 although it is prejudicial, obviously, the inference
16 is clear as to what the government wants, but it does nothing
17 to show who was in the car on January 10, 1973, almost
18 a year before. It does nothing to show any connection
19 between the defendant and the car on that day
20 except to indicate an inference, and a prejudicial
21 inference, before the jury. I therefore move to strike
22 his testimony.

23 THE COURT: The motion is denied.

24 Do you want to cross examine?

25 MR. DOWD: No.

I rka Moore-cross 3459

2 MR. ENGEL: May I ask one more question
3 of the witness.

4 THE COURT: Tell me what the question is.

5 MR. ENGEL: I will ask: "In your pre-
6 sence did Agent Nolan ever ask Harry Pannirello what
7 street Joe DiNapoli's girlfriend lived on?"

8 THE COURT: Don't bother asking it.

9 (In open court.)

10 CROSS EXAMINATION

11 BY MR. DOWD:

12 Q Agent, the green car, was that a stationwagon?

13 A No, it was not. It was a sedan.

14 MR. DOWD: No further questions.

15 THE COURT: You may step down.

16 (Witness excused.)

17 MR. ENGEL: The government calls Al
18 Casella, your Honor.

19 MR. DOWD: In the interim, can we go to the
20 side bar?

21 THE COURT: Yes.

22 --- (At the side bar.)

23 MR. DOWD: Your Honor, I just received a
24 voluminous amount of material which Mr. Phillips tells me
25 was handed over by the Police Department yesterday and

1 I just received it this morning.

2
3 MR. PHILLIPS: Let me explain, if I may.

4 MR. DOWD: I can explain it, I know what
5 it is, I can read.

6 MR. PHILLIPS: You probably know it better
7 than we do.

8 MR. DOWD: You will concede I haven't seen
9 it before?

10 MR. PHILLIPS: I don't know.

11 MR. DOWD: Well, I haven't.

12 It appears to be transcripts of these tapes re-
13 lating to Frank Russo. Some of the stuff is handwrit-
14 ten. I am going to have a difficult time cross
15 examining this man until I have an opportunity to peruse
16 this.

17 We can proceed with direct, obviously --

18 MR. ENGEL: Your Honor, we are prepared
19 to call Sergeant O'Boyle at this time.

20 MR. PHILLIPS: Let me just clear up the record.
21 The tapes themselves were turned over to Mr.
22 Dowd six weeks ago, except two. The last two were
23 turned over approximately two to three weeks ago.

24 I don't know whether Mr. Dowd has made any
25 attempt to have any of the tapes transcribed. I have

not seen attempts at transcription on Mr. Dowd's part.

We contacted Mr. Miller's office about a week or so ago to see whether he had transcripts. He informed us that the transcripts he had were turned over to Mrs. Rosner. I don't know whether any copies were made of them or not, I have not seen them.

The particular items that Mr. Dowd is making reference to which we gave him were delivered to us by the witness Casella last night at approximately 7 o'clock after he obtained them from the Police Department. They are merely his handwritten notes and rough drafts of transcripts of the tapes that Mr. Dowd has had for weeks.

THE COURT: Let's be realistic about this thing. From what I gather, this witness is going to be on at least a half hour, possibly 45 minutes, which will take us to 12:15. If it takes us to 12:15, maybe we will break early for lunch and you could go through these things.

MR. ENGEL: We would just as soon call Sergeant O'Boyle.

MR. PHILLIPS: This is on the Springer seizures.

MR. EPSTEIN: Does your Honor want me to get Mr. Siegal?

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THE COURT: No, but on your way back tell him you will leave off this witness and go back to Mr. O'Boyle.

MR. PANZER: I will tell him, he sits right next to me.

MR. DOWD: This testimony of O'Boyle has nothing to do with Russo?

MR. PHILLIPS: Yes.

MR. DOWD: I would not like to be leafing through the material in court. I would like to go outside.

THE COURT: Mr. Panzer, would you cover for him?

MR. PANZER: Sure.

(In open court.)

THE COURT: All right, Mr. Engel, we are not going to call Mr. Capella now.

MR. ENGEL: We are going to call Sergeant O'Boyle.

THE COURT: The court's notes indicate that you were sworn some time ago on this trial. I don't think it will hurt if you take another oath.

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3463

2 M A R T I N O ' B O Y L E, called as a witness
3 by the government, being first duly sworn, testified
4 as follows:

5 THE WITNESS: Shield No. 1021.

6 DIRECT EXAMINATION

7 BY MR. FORTUIN:

8 Q Sergeant, I believe you previously testified
9 in this case?

10 A That is correct.

11 Q At that time you stated you were a sergeant
12 with the New York City Police Department?

13 A Yes.

14 Q You have been with the Police Department 21
15 years?

16 A Twelve years.

17 Q Are you currently assigned to the Major
18 Investigation Section of the Narcotics Division?

19 A Yes, I am.

20 Q And you are a team supervisor?

21 A That is correct.

22 Q Directing your attention to the evening of
23 December 3, 1973 did you have occasion to go to the
24 apartment of John Springer?

25 A Yes, I did.

1 rka

O'Boyle-direct

3464

2 MR. SIEGEL: Objection. Calling for a
3 conclusion. The conclusion is --

4 THE COURT: I understand.

5 Did you have occasion to go to an apart-
6 ment --

7 Q Where did you go that evening?

8 A 3139 New England Thruway in the Bronx.

9 Q Is that in the area of 233rd Street?

10 A Yes, it's close. It's not too far from
11 233rd Street.

12 Q How many blocks from 233rd Street is that
13 apartment?

14 A Eight or ten blocks.

15 Q Is the New England Thruway also known as
16 Route 95 in this area?

17 A Yes, it is.

18 Q At about what time did you go to this apartment?

19 A Approximately 8:15 p.m.

20 Q Can you tell us what happened when you got
21 there?

22 A Yes. I entered that building, 3139 New
23 England Thruway, with Detective Wysocki, Detective
24 Casella, Detective Sheehan.

25 As I was ascending the stair to the second-

1 rka O'Boyle-direct 3465

2 floor apartment, I noticed a female standing outside the
3 door on the second-floor landing.

4 Q Did you say anything to her at that time?

5 A Yes, I did.

6 Q What did you say and what did she say?

7 A I identified myself and she didn't respond.
8 She then opened the door and spoke briefly with John
9 Springer, who was inside.

10 MR. SIEGEL: Objection.

11 THE COURT: I will permit it.

12 Q The person that you have identified, you
13 have mentioned as John Springer, is he present in the
14 courtroom today?

15 A Yes, he is.

16 Q Would you point him out, Sergeant?

17 A He is the gentleman with the maroon shirt.

18 MR. SIEGEL: So stipulated, your Honor.

19 Q When you saw the defendant Springer through the
20 door what, if anything, was he doing?

21 A He was standing by a wooden structure.

22 Q Would it be like a table?

23 A Yes. It was either a counter or a bar,
24 possibly.

25 Q From where you were, could you see what was on

1 nka O'Boyle-direct 3466

2 top of that bar?

3 A Yes, I could.

4 Q What did you see?

5 A I saw pieces of aluminum foil and I also a
6 white powder, what appeared to be white powder.

7 Q After this woman had the conversation that you
8 just described, what did she do?

9 A She closed the door and remained outside the
10 door on the second-floor landing.

11 Q Did you say anything to her then?

12 A Yes. At that time I was on the second floor
13 landing. I informed her --

14 MR. SIEGEL: Objection.

15 THE COURT: I will permit it. Go ahead.

16 A I informed her that I had --

17 THE COURT: You had a conversation with her,
18 right?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: How long was it?

21 THE WITNESS: Very brief. Approximately
22 five seconds.

23 THE COURT: What happened next?

24 THE WITNESS: I then -- she moved away from
25 the door after I had this conversation with her and,

1 rka

O'Boyle-direct

3467

2 assisted by Detective Wysocki, I forced open the door.

3 Q After you forced open the door did you enter
4 the apartment?

5 A Yes, I did.

6 Q Who else entered the apartment with you?

7 A Detective Wysocki.

8 Q After you and Detective Wysocki entered the
9 apartment what happened?

10 A I went to the left into the living room area
11 while Wysocki went to the right. After I had a brief
12 conversation again with Sysocki I approached the bathroom
13 where Wysocki was standing. He was outside the bathroom,
14 actually, and I saw John Springer inside the bathroom.

15 Q What else did you see at this time, if any-
16 thing?

17 A I saw a piece of aluminum foil on the floor
18 in the hallway outside the bedroom.

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2 Q After you saw the defendant Springer, what
3 happened after that?

4 A We placed handcuffs on John Springer. I then
5 noticed that the female who I first saw on the second
6 floor landing was now standing by that countertop structure
7 that was inside the door and she was attempting to --

8 MR. SIEGEL: Objection.

9 THE COURT: What was she doing?

10 A (Continuing) She was knocking the contents of
11 the countertop to the floor.

12 Q What did you do then?

13 A I had a conversation with her and she moved to
14 the living room area.

15 Q What did you do with the defendant Springer?

16 Q At this time Detective Wysocki was standing
17 with the defendant Springer directly outside the bathroom.

18 Q Where did they go, if any place?

19 A When Detective Cassella and Detective Sheehan
20 entered the apartment, I directed Detective Sheehan to guard
21 John Springer. He then removed him inside a bedroom
22 opposite the bathroom and he remained there.

23 Q Did items that you described that you saw on the
24 countertop and some of them that were being knocked to the
25 floor, did you tell someone to seize those?

2 A Yes, I did.

3 Q Who did you tell to do that?

4 A Detective Cassella and Detective Wysocki.

5 Q After the events you have just described, did
6 you have a further conversation with John Springer that
7 evening?

8 A Yes, I did.

9 Q How did that come about?

10 MR. SIEGEL: Your Honor --

11 THE COURT: Come to the side bar.

12 (At the side bar.)

13 THE COURT: I assume from hearing the evidence
14 that has come out, the rest of the conversation with the
15 defendant John Springer deals with the alleged attempt by
16 defendant John Springer to bribe police officers who were
17 present there that night. I am permitting the evidence
18 concerning the seizure of the narcotics in as a subsequent
19 similar act to show intent, but I certainly don't intend
20 to let the evidence or any evidence come in as to any
21 attempt at bribery. That is a New York State offense,
22 New York State will take care of it. It doesn't belong
23 in this case.

24 MR. SIEGEL: Your Honor, I would like the
25 record to be abundantly clear that I have on previous

2 occasions objected to the introduction of this evidence
3 and this conversation.

4 THE COURT: Absolutely.

5 MR. SIEGEL: I would have, of course, a continu-
6 ing objection to this.

7 THE COURT: Yes.

8 MR. SIEGEL: I have a further technical problem
9 and that is, as you are well aware, this officer testified
10 at the motion to suppress. During the course of my
11 cross-examination, it is anticipated that I would be using
12 minutes from that motion to suppress to impeach the witness
13 on the stand. However, I find it difficult to refer to
14 the motion to suppress. How would the Court suggest I
15 refer to it for the impeachment process? I can't say
16 he testified during this trial.

17 MRS. ROSNER: At a hearing.

18 THE COURT: At a hearing or another proceeding.

19 There is no reason to bring up the motion to
20 suppress before the jury.

21 Yes, I will give an instruction on behalf of
22 your client if that is what you are waiting for?

23 MRS. ROSNER: That is exactly what I was going
24 to say, with regard to the physical exhibits seized.

25 THE COURT: All right.

2 (In open court.)

3 BY MR. FORTUIN (Continuing):

4 Q Sergeant, I have one more question.

5 On the evening in question, other than the human
6 beings present that you described, were there any animals?

7 MR. ELLIS: Objection.

8 THE COURT: I will permit it.

9 MR. SIEGEL: Your Honor, I would object and I
10 know what Mr. Fortuin's point is.

11 THE COURT: I know your objection. I will
12 permit it.

13 Were there any animals there?

14 THE WITNESS: Yes, there was.

15 Q What kind of animal was there?

16 A There was at least one dog.

17 Q What kind of a dog?

18 A It was a large dog.

19 Q Do you remember what color?

20 A No, I don't.

21 Q Was it a dark dog or a light dog?

22 A I don't recall.

23 Q When you say large, how big is large?

24 MR. SEIGEL: Asked and answered.

25 THE COURT: It is. Large dogs are large dogs.

2 MR. FORTUIN: No further questions.

3 THE COURT: Mr. Siegel, do you wish to inquire?

4 MR. SIEGEL: Yes.

5 May I have a few minutes?

6 THE COURT: To put yourself together?

7 MR. SIEGEL: Yes.

8 MR. PANZER: I have one question, can I ask it

9 from here?

10 THE COURT: Yes, just stand up.

11 CROSS EXAMINATION

12 BY MR. PANZER:

13 Q I represent Hattie Ware. You referred to a
14 female that you saw on that day. Was that female Hattie
15 Ware?

16 THE COURT: Point her out.

17 A I do not believe so.

18 MR. PANZER: No further questions.

19 THE COURT: Anybody else?

20 MR. PHILLIPS: If your Honor was going to
21 excuse the jury, may we approach the side bar first?

22 THE COURT: Let me excuse the jury for five
23 minutes. I think that is the simplest way then we don't
24 need to go to the side bar.

25 (Jury leaves room.)

2 (Jury leaves room.)

3 THE COURT: Sergeant, will you step out.

4 (Witness leaves room.)

5 MR. PHILLIPS: Your Honor, yesterday Agent
6 Nolan was asked about the identification of the defendant
7 DiNapoli by the witness Pannirello, and we offered a total
8 of 15 photographs which are Government's Exhibits 88-B
9 collectively.

10 This morning before court I asked the court
11 clerk to mark all of the photographs and they are marked
12 now as Government's Exhibits 88-B through 88-O, as well as
13 Government's Exhibit 88-A which has also been marked and
14 the photograph actually identified by the witness Pannirello
15 with the B number. It is of DiNapoli.

16 THE COURT: The B number refers to the criminal
17 identification number given by the New York City Police
18 Force.

19 MR. PHILLIPS: Your Honor, in light of your
20 ruling that the photographs would not be received in
21 evidence and therefore the jury cannot see them, the
22 Government would ask that the record reflect, since it is
23 not reflected by the direct examination from Agent Nolan
24 yesterday, that the number of photographs that were shown
25 to the witness Pannirello was 15 in number and that they

2 are all of white males and that the defendant DiNapoli
3 was one of those and that his photograph was picked out by
4 the witness Pannirello.

5 THE COURT: I think the record does reflect
6 that now. I thought you were about to offer those again.

7 MR. PHILLIPS: I just read through Agent Nolan's
8 testimony --

9 THE COURT: I know you would like to but you
10 are not going to do it.

11 MR. PHILLIPS: I just read through Agent Nolan's
12 examination which was given to me by the court reporter a
13 short while ago and it isn't reflected in Agent Nolan's
14 examination and it wasn't on the cross.

15 THE COURT: I thought it had been. I saw him
16 look through the pictures and count them out. I think
17 the jury saw it too, so I don't think there is any
18 necessity of putting anything else into it. Maybe that
19 is how I got the impression it was in the record.

20 MR. PHILLIPS: May I hand up his direct examin-
21 - ation for your Honor to read?

22 THE COURT: I have it already.

23 Mr. Siegel, how long do you think it will be?

24 MR. SIEGEL: Another five to ten minutes.

25 THE COURT: How long do you expect to take after

2 that?

3 MR. SIEGEL: I would say anywhere from 30 to
4 40 minutes.

5 THE COURT: I don't know, I have a logistics
6 problem today in feeding the jury. If you can make it
7 30 minutes, fine. If we have to go 40 minutes, all
8 right, but I want it done before lunchtime.

9 You want five minutes to put it all together?

10 MR. SEIGEL: Yes.

11 THE COURT: Mr. Dowd, did you have a chance to
12 go through those transcripts which were given to you?

13 MR. DOWD: Not all of them.

14 THE COURT: I expect you will go through the
15 rest of them at lunch?

16 MR. DOWD: Yes.

17 MR. CURLEY: Your Honor, has the record been
18 clear as to the objection to this testimony by other
19 defendants?

20 THE COURT: Absolutely. I think that all
21 the other defendants have objected to it. If they haven't,
22 the record should reflect that they are, and that this is
23 not going in at all on the conspiracy. This goes in
24 solely on the substantive count against defendant John
25 Springer and not in any way should it be taken into

2 account in weighing any evidence in connection with anybody
3 else; is that what you want?

4 MR. CURELEY: Yes.

5 I am not satisfied with that.

6 THE COURT: Yes.

7 The world isn't a perfect place.

8 MR. LOPEZ: Judge duffy, I will object to Mr.
9 Phillips' offer as far as the photographs are concerned.

10 I would like to call the Court's attention to pages 3398
11 when you review the testimony on Mr. Phillips' request.

12 THE COURT: Do you realize this case has gone
13 that far?

14 MR. PHILLIPS: Your Honor --

15 THE COURT: I will not listen to argument about
16 what is in the record, I was here.

17 Mr. Siegel, 12 noon I will be back here.

18 You better be ready at that point.

19 (Recess.)

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2 CROSS EXAMINATION

3 BY MR. SIEGEL:

4 Q Sergeant O'Boyle, before entering the apartment
5 house, how long did you have the building under sur-
6 veillance?

7 A We didn't have the building under surveillance.

8 Q You just walked right in?

9 A That's correct.

10 Q So we can assume then that you did not see the
11 defendant John Springer enter into the house?

12 A Would you repeat the question?

13 Q Since you didn't have the building under super-
14 vision, we can assume that you did not see him enter the
15 apartment?

16 A That's correct.

17 Q So you don't know how long he was there before
18 you were going to see him?

19 A No, I did not.

20 Q When you observed the door to be open, where
21 were you physically located? Were you on the steps?

22 A I was by the door.

23 Q You testified that you had a conversation with
24 a woman there when you first entered the outer lobby; is
25 that correct?

1. hpp2

O'Boyle-cross

2. A No, that's not correct.

3. Q Did there come a time when you entered the out-
4. side door of the building?

5. A Yes, there did.

6. Q Did there come a time when you observed a woman
7. at the top of the steps?

8. A There did.

9. Q Did there come a time when you said you had a
10. conversation with that woman?

11. A Yes, there did.

12. Q At the time you had the conversation with that
13. woman, where were you physically located?

14. A On the stairway.

15. Q You were approximately half-way up?

16. A Approximately.

17. Q And it was at this point that you made your
18. observation of the accused, John Springer?

19. A No, it was not.

20. Q When you had this conversation with this woman,
21. while you were on the steps, was the door open at this time
22. or was it closed?23. A The door was closed when I had the first con-
24. versation with the female.

25. Q Then did there come a time when the door opened

2 again?

3 A That's correct.

4 Q Who opened up the door?

5 A The female.

6 Q Where were you physically located at this time?

7 A I was still on the stairway.

8 Q It is at this point that you made the observation
9 of the accused, John Springer?

10 A That's correct.

11 Q For approximately how long was the door open
12 on the second occasion before you say that there came a time
13 when it was shut? Just a matter of seconds?

14 A Five to ten seconds; possibly.

15 Q And at this time you were still physically on
16 the stairs?

17 A That's correct.

18 Q And, therefore, you were looking into the apartment
19 at an angle?

20 A Yes, sir, I was looking directly into the apart-
21 ment.

22 Q Well, if you were on the steps, wouldn't you say
23 you would be looking up at an angle into the apartment?

24 A I was looking at a slight angle.

25 Q A slight angle. You testified you observed a

1 hpp4

O'Boyle-cross

2 table near which you saw the accused standing by?

3 A That's correct.

4 Q Where was this table located in relation to the
5 accused, John Springer?6 A From my position, the table was in front of
7 John Springer.

8 Q It was in front of John Springer?

9 A That's correct.

10 Q And at this time you were approximately four
11 or five steps from the top of the landing?

12 A No, I was not.

13 Q You were on the steps at this time?

14 A Yes, I was.

15 Q How many steps were you down from the top of the
16 landing?

17 A Approximately two steps, possibly one step.

18 Q But you are not sure whether it was one, two,
19 possibly even three?

20 A It's possible.

21 Q From where you were located -- let me withdraw
22 that question. You say you observed a table inside the
23 defendant's apartment. In relation to the front door,
24 where was this table located?

25 A Approximately five feet from the door inside

2 the apartment and to the right of the door from my position,
3 outside the door.

4 Q It was inside the apartment. It was approximately
5 five feet inside the apartment?

6 A That's correct.

7 Q And from where you were standing, it was approxi-
8 mately another seven or eight feet?

9 A Possibly.

10 Q Possibly ten?

11 A Five to ten feet, I would say, eight feet.

12 Q And did you testify that you observed certain
13 items on the table top; is that correct?

14 A Yes, I did.

15 Q Where on the table top were these items located?

16 A I don't know their exact location.

17 Q You don't know the exact location where on the
18 table they were?

19 A No, I don't.

20 Q You testified you observed a white powdery
21 substance on the table.

22 A Yes, I did.

23 Q At approximately 13 to 15 feet from where you were
24 located?

25 A Approximately 10 to 15 feet.

1 hpp6 O'Boyle-cross

2 Q Well, if the table was five feet in size, and
3 you were approximately eight feet from the door, would you
4 concede it would be possibly between 13 to 15 feet?

5 A Yes, approximately.

6 Q How much of the white powder was exposed?

7 A How much was showing?

8 Q How much was exposed?

9 A It appeared to be approximately one inch high in
10 a heap.

11 Q Was this in a tinfoil?

12 A There was some that appeared to be laying on
13 tinfoil and there was some other that from my position seemed
14 to be on the table itself.

15 Q When you say it was on the table itself, do you
16 know where on the table it was located?

17 A No, I can't specifically say where on the table
18 it was located.

19 Q This white powdery substance which you say was
20 on the table, how much of that was exposed?

21 A About the same amount as the white substance that
22 was on the tinfoil.

23 Q Was it one heap or was it in several small little
24 piles?

25 A From my position, I couldn't tell.

1 hpp7

O'Boyle-cross

2 Q From your position, you couldn't tell?

3 A From my position I couldn't tell if it was in
4 little piles, as you say.

5 Q But you say you saw this white powder, didn't you?

6 A Yes, I saw it.

7 Q You don't know in what shape it was in?

8 A I testified it appeared to be in a heap.

9 Q By the way, Officer, at this time, in December of
10 '73, isn't it a fact that the accused, John Springer, his
11 residence was 1077 Washington Avenue and that this was
12 the residence of his wife?

13 A I don't know that.

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Q Sergeant O'Boyle, do you see the woman whom you arrested, or who was in the apartment on that evening, in the courtroom?

5

A I don't see the female that was there that evening.

7

Q When you made these observations of this powdery substance on the table top, but where on the table top you don't know where it's located, you were still looking up on an angle during this five-second period of time?

12

A At a slight angle, yes.

13

Q And it has been your testimony that you just saw the defendant by this table, you didn't see him doing anything?

16

A That's correct.

17

Q When there came a time when you entered the apartment, you testified that you saw him in the bathroom?

19

A Yes, I did.

20

Q Now, did there come a time when that bathroom door was shut?

22

A I don't know.

23

Q But your first observation of the accused John Springer when you went to that apartment was when he was in the bathroom?

1 hpa2

O'Boyle-cross

2 A That's correct.

3 Q Isn't it a fact that the bathroom is approxi-
4 mately 20 feet from the kitchen?

5 A It may be.

6 Q You have described this white powdery sub-
7 stance, and you said that some of it was on the tin
8 foil?

9 A - Yes.

10 Q How large was this tin foil?

11 A I don't know.

12 Q You don't know?

13 A That's correct, I don't know.

14 Q Was the tin foil folded?

15 A That particular tin foil was not folded.

16 Q That was not folded?

17 A No.

18 Q How large was it?

19 MR. SIEGEL: I'll withdraw that. It has
20 been asked and answered.21 Q And, further, your testimony is you don't
22 know where on the table that tin foil was?

23 A That's correct.

24 Q Now, you also testified that on this table
25 you saw a white powdery substance somewhere on the table

2 but you don't know where on the table that was.

3 A That's correct.

4 Q And this was at a distance of 15 feet, 13 to
5 15 feet away?

6 A Approximately, yes.

7 Q Now, this apartment entrance is located at an
8 angle or is it a 90-degree angle to the staircase?

9 A When you reached the second floor landing from
10 the staircase you have to turn to your left in order to
11 enter the apartment.

12 Q Is the doorknob on the left or is it on the
13 right?

14 A I don't know.

15 Q Does the door -- when you open the door, do you
16 open the door inward or do you open the door outward?

17 A To the best of my recollection, you open the
18 door inward.

19 Q You open the door inward?

20 A Yes.

21 Q Are you sure of that or --

22 A No, I'm not sure of that.

23 Q Didn't you previously testify that you ob-
24 served the door being opened and closed?

25 A Yes, I did testify to that.

2 Q But you don't know on which side the doorknob
3 is or how the door opens, is that correct?

4 A That's correct.

5 Q Would you describe the table on which you say
6 you saw this alleged white powder?

7 A Yes. It was a wooden structure, possibly 48
8 inches in height. It had --

9 Q I don't want to interrupt you, but that's
10 approximately four feet?

11 A That's correct.

12 Q Please continue.

13 A It had shelves on one side underneath. It
14 was -- one side was circular, and I believe the top it-
15 self was either wooden or possibly Formica.

16 Q You testified that you observed the accused
17 behind this table?

18 A From my position he was behind the table.

19 Q Was he directly behind the table or was he
20 to one side or the other?

21 A He was behind the table.

22 Q Was he right in the middle of the table or
23 was he toward the left or to the right of center?

24 A I don't know if he was to the left or to the
25 right of the center of the table. I don't recall

1 hpa

O'Boyle-cross

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2 whether or not he was to the left or right of the center
3 of that particular table.

4 Q Now, when you testified that you made the
5 observation of this white powder approximately one inch
6 in height, you say this was on the tin foil?

7 A This was powder on the tin foil, yes.

8 Q The white powder would have the inch-high
9 pile, as you say?

10 A Approximately one inch, yes.

11 Q When you say approximately an inch, it could
12 be a half an inch.

13 A It was approximately one to one and a half
14 inches, I believe.

15 Q But you are not sure?

16 A I'm not sure.

17 Q It could very well be half an inch, because
18 you are not sure?

19 A I don't know.

20 Q Did you notice any other objects on the table,
21 for example, a sugar bowl?

22 A I didn't notice.

23 Q Did you notice a napkin dispenser on the table?

24 A I don't recall if there was a napkin dispenser
25 on the table.

2 Q When you say you don't recall, you don't
3 remember?

4 A That's correct.

5 Q And you were the second one in that apartment,
6 you were behind Detective Wysocki?

7 A Yes.

8 Q -- You both entered the apartment about the same
9 time?

10 A Yes.

11 Q Sergeant O'Boyle, when you made this observation
12 of this substance on the tin foil, was there a light in
13 the kitchen?

14 A There was a light on in the apartment.

15 Q In the apartment?

16 A Yes.

17 Q And was the kitchen illuminated? Was there
18 light in the kitchen?

19 A I don't know if the kitchen was illuminated?

20 Q In other words, you don't know whether there
21 was light in the kitchen or not?

22 A No, sir, I didn't enter the kitchen at that
23 time.

24 Q You didn't enter the kitchen?

25 A That's correct.

2 Q Sergeant O'Boyle, what is the first room you
3 enter when you enter the apartment?

4 A I believe it's a dining room area.

5 Q Was the dining room lighted?

6 A Yes, it was.

7 Q Do you know where the light was coming from?

8 A No, I don't.

9 Q Wasn't there a glare on this tin foil from the
10 light?

11 Do you want me to repeat the question?

12 A No, I understood the question.

13 Q Wasn't there a glare on this tin foil, since
14 there was light?

15 A I don't recall a glare on the tin foil.

16 Q Officer, at a distance of approximately 15 feet
17 away will you tell the ladies and gentlemen of the
18 jury the difference in appearance between salt and sugar?

19 A Salt and sugar?

20 Q Yes.

21 A Salt is about the same color as sugar, granulated
22 sugar.

23 Q At a distance of approximately 15 feet away?

24 A Yes.

25 Q So there is no observable difference between

1 hpa O'Boyle-cross 3491

2 salt and sugar at 15 feet away, is that correct?

3 A - The granules may be larger, of sugar 15 feet
4 away, than salt at 15 feet away.

5 Q Are you testifying at a distance of 15 feet away
6 you can distinguish the difference of granules?

7 A I didn't testify to that.

8 Q -- At 15 feet away can you tell us the differ-
9 ence between salt and sugar in appearance?

10 A Probably not.

11 Q There is no difference in appearance, is that
12 correct?

13 A Probably not, from 15 feet away.

14 Q At 15 feet away what is the difference in appear-
15 ance between cocaine, sugar and salt, at 15 feet away?

16 A - The structure of the substance itself is differ-
17 ent, the color is the same.

18 Q I am not asking for a chemical breakdown.

19 I'm just asking for the appearance at 15 feet away.

20 A The appearance is --

21 Q Is the same?

22 A -- similar, yes.

23 Q What is the difference in appearance between
24 salt, sugar and heroin, at 15 feet away?

25 A They are similar, yes.

2 Q They look the same, is that correct?

3 A I stated that they were similar.

4 Q Did you notice a salt shaker on the table?

5 A No, I didn't notice.

6 Q When you say you didn't notice, it could have
7 been but you don't remember?

8 A That's correct.

9 MR. SIEGEL: Your Honor, I have no further
10 questions of this witness.

11 THE COURT: Does anybody else wish to
12 inquire?

13 All right, Mr. Dowd, go ahead.

14 CROSS EXAMINATION:

15 BY MR. DOWD:

16 Q Sergeant O'Boyle, you had some dealings with
17 John Barnaba, did you not?

18 MR. FORTUIN: Objection, your Honor, this
19 is outside the scope of the direct.

20 THE COURT: He is making him his own witness.

21 Go ahead and answer the question.

22 A Yes, I did.

23 MR. DOWD: I am not making him my own
24 witness, your Honor. I consider him a hostile wit-
25 ness.

1 hpa

O'Boyle-cross

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2 THE COURT: All right. Go ahead and
3 answer the question.

4 Q You had some dealings with John Barnaba?

5 A That's correct.

6 Q After he had become an informer and agent of
7 the government, is that correct?

8 A That's correct. - - -

9 Q And you saw him on a number of occasions during
10 November and December of 1972 and January, 1974?

11 A I saw him on a number of occasions in December
12 and January, December of 1972, January of 1973.

13 Q Right. And was there an occasion on
14 January 9th and January 10th of 1973 that you met John Barna-
15 ba at a motel in Queens?

16 A I met John Barnaba on numerous occasions in a
17 motel in Queens.

18 Q Did you, on those two dates, January 9th and
19 January 10th, have occasion to search John Barnaba?

20 A I would like to refer to a report to see the
21 exact date. I don't recall the date.

22 Q Do you have a report? -

23 A I have one in my office. I don't have one
24 here.

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O'Boyle-cross

3494

2 Q Sergeant O'Boyle, let me show you two documents.
3 MR. DOWD: I don't believe they are marked at
4 this point.

5 THE COURT: Where are we on the 3500 series?

6 MR. ENGEL: If Mr. Dowd could refer to them.

7 THE COURT: Are they marked?

8 MR. ENGEL: I don't know what he has.

9 MR. DOWD: They are rough drafts Tape C-141
10 and M-78.

11 MR. ENGEL: They have not been marked.

12 Those two transcripts to which he refers, may
13 they be marked as defense exhibits.

14 THE COURT: As Government Exhibits 35 something
15 A. Tell me what the something is? How high are we in
16 the 3500 series?

17 MR. ENGEL: It would be 3593.

18 THE COURT: 3593 and 3594.

19 Q -- which appear to be rough transcripts of
20 tapes and I ask you to take a look at the top of each one
21 in relation to a date to see if that refreshes your
22 recollection whether you searched John Barnaba on those
23 dates at a motel in Queens?

24 A Yes, I did.

25 Q And you searched his automobile too, didn't you?

2 A Yes.

3 Q And you searched the undercover officer, didn't
4 you?

5 A Yes, I did.

6 Q This would be standard procedure when dealing
7 with an informant when he would be going on what you would
8 call a buy operation?

9 A Yes, sir, that is standard procedure.

10 Q And that is because you want to make sure that
11 the confidential informant, the agent in this case John
12 Barnaba wasn't concealing any drugs --

13 MR. FORTUIN: Objection. It is argumentative.
14 It calls for a conclusion.

15 MR. DOWD: It is not argumentative.

16 THE COURT: Let's do it the other way around.

17 You searched him and you didn't find any
18 contraband on him, is that correct?

19 THE WITNESS: That is corredct.

20 Q And this is done to be assured -- this is done
21 as a regular procedure, is it not?

22 A Yes. At that time it was a regular procedure
23 in the district I was assigned to.

24 Q And you do that, and that procedure was estab-
25 lished and is established so that the confidential informant

2 may not have drugs on him which might bring into question
3 whether the drugs he buys were tampered with by him, is
4 that correct?

5 MR. FORTUIN: Objection.

6 THE COURT: I will permit it but I will change
7 the question around.

8 There are a number of reasons why this is done,
9 is that not correct, this search?

10 THE WITNESS: That is correct.

11 THE COURT: One of the reasons is to make sure
12 the confidential informant does not have any contraband
13 on him at the time he goes out.

14 THE WITNESS: That is correct, your Honor.

15 Q And you followed Mr. Barnaba that evening,
16 January 9, 1973 and January 10, 1973?

17 A Yes.

18 Q On January 10, 1973, you kept him in visual
19 observation at all times?

20 A Yes.

21 Q You have been dealing with John Barnaba for
22 about a month, January 9, January 10, 1973?

23 A Yes, I had met him early in December of 1972.

24 Q How many times prior to that night, January 9,
25 had you searched him?

1 ks4

O'Boyle-cross

2 MR. FORTUIN: Objection.

3 THE COURT: I will permit it?

4 A I don't recall if I searched him prior to that.

5 Q Is there any way you can check?

6 A I would have to check the records of all my
7 operations from December until that day.8 Q But you don't have any independent recollection
9 whether or not you searched him on any day prior to January
10 9, 1973?

11 A That is correct.

12 Q How long have you been involved in narcotics
13 investigations, Sergeant O'Boyle?

14 A Since December of 1972.

15 Q That was your first experience with an informer?

16 A I had met informers prior to that in other
17 assignments.18 Q In your experience, did you find Mr. Barnaba to
19 be a very experienced street-wise informant?

20 MR. FORTUIN: Objection.

21 THE COURT: I will sustain it.

22 Q Were you aware at the time that you began deal-
23 ing with John Barnaba that he had a very long record in
24 respect of narcotics?

25 MR. FORTUIN: Objection.

2 THE COURT: I will sustain that one too.

3 Q You found John Barnaba, did you not, to be a
4 very effective informer, did you not, an agent of the
5 Government?

6 MR. FORTUIN: Objection.

7 MR. DOWD: I submit --

8 THE COURT: Take the "very" out of it.

9 Was John Barnaba an effective person in the role
10 that he was playing?

11 THE WITNESS: Yes, your Honor.

12 Q Is that because you found him to be very savvy
13 and street-wise, street-smart as you would use that term
14 in police parlance?

15 MR. FORTUIN: Objection.

16 THE COURT: That is the same question as before.

17 Same ruling.

18 Q So, so far as you know, the only nights that you
19 searched John Barnaba that you recall are January 9th
20 and January 10th, 1973, to determine whether he had any
21 drugs on his person or in his car prior to going out on
22 a buy operation?

23 A I searched him on numerous occasions after
24 January 9.

25 Q Is there any way you can check that for us,

Officer?

You say after January 9?

A Throughout the early part of 1973.

Q Could you check for us on what dates in January you searched John Barnaba prior to him going out in respect to a buy operation?

THE COURT: You mean the entire month of January?

MR. DOWD: From the 1st to the 25th of January, your Honor.

THE COURT: If the man can do it.

A I will have access to my records Monday morning, the Police Department records.

Q You couldn't get them today?

MR. FORTUIN: Your Honor, I will object. This is a discovery request and I will object to it in the presence of the jury.

THE COURT: He asked him a question. Does he have access to his records today. I gather from the fact he said he could get them on Monday morning, he doesn't.

Q Can you get them today?

A I don't think so, no.

MR. DOWD: No further questions, your Honor -- one further question.

2 Q Where are the records today, if you know?

3 A They are maintained in the Police Headquarters
4 Building, 1 Police Plaza in the major investigation section
5 office.

6 Q Right next door to here?

7 A Yes.

8 Q And that building is not open today?

9 MR. FORTUIN: I object to this.

10 THE COURT: The building is open today but you
11 know as well as I do, there are only people like you and I
12 that work on Saturdays.

13 MR. DOWD: And Sergeant O'Boyle.

14 THE COURT: The clerical force I am sure is not
15 working.

16 CROSS EXAMINATION

17 BY MR. SIEGEL:

18 Q Sergeant O'Boyle, on the evening of December 3,
19 1973 when you arrested the accused John Springer, did you
20 bring those drugs into the apartment?

21 A No, sir.

22 Q Did you or any of your brother officers bring
23 those drugs into that apartment?

24 A No, sir.

25 Q Did either you or your brother officers ever say

2 to the accused, "If we can't get you one way, we will get
3 you the other way?"

4 A No, sir.

5 MR. SIEGEL: No further questions

6 MR. FORTUIN: We would like to approach the side
7 bar.

8 THE COURT: No. I will send the jury to lunch
9 right now. I told you I had a logistics problem.

10 (Jury leaves room.)

11 THE COURT: Sergeant, don't leave. Let's
12 hear what is going on now.

13 Do you want the witness back this afternoon?

14 MR. PHILLIPS: It depends on your Honor's
15 ruling based on the Government's application.

16 Our application is that we be permitted to go
17 into on redirect examination, to go into the bribe situ-
18 ation that occurred that evening. It seems clear now the
19 door has been opened by Mr. Siegel's last questions,
20 whether Sergeant O'Boyle or any of his fellow officers
21 brought the drugs into the apartment.

22 MR. SIEGEL: Your Honor, I fail --

23 MR. PHILLIPS: Also, the question did Sergeant
24 O'Boyle or any of his fellow officers say we will get you
25 one way or the other.

1 ks9

O'Boyle--

3502

2 THE COURT: Sergeant O'Boyle, have a nice aft -
3 noon.

4 The answer is no.

5 (Witness excused.)

6 THE COURT: I will see you back here at two
7 o'clock.

8 (Luncheon recess.)

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1 hpp1

2 A F T E R N O O N S E S S I O N

3 2.05 P.M.

4 (Jury not present.)

5 MR. LOPEZ: Your Honor, I have an application.
6 My request is that perhaps this suitcase, I think I have
7 seen it before, your Honor, I don't remember when, but
8 could it be placed underneath the table until it is in-
9 troduced?

10 MR. CURRAN: I don't know that it makes any
11 difference. We're going to mark it for identification,
12 and at that point we'll have to --

13 THE COURT: Yes, I understand.

14 There are a couple of things, first. I think
15 by this point you know when I come out without a robe on,
16 I have something on my mind. I gathered from this morning
17 Agent Cassella is to take the stand next. Correct?

18 MR. ENGEL: That's correct, sir.

19 MR. SIEGAL: May I ask a question. Does he take
20 the stand with respect to the 7587 or this other report?

21 MR. ENGEL: That's correct.

22 MR. SIEGAL: May we have a side bar?

23 MRS. ROSNER: It isn't necessary because the
24 jury isn't here. Your Honor, this is the document I
25 referred to yesterday as containing a declaration by one

1 hpp2

2 Carmine, not the defendant Carmine Tramunti but another
3 Carmine, attributing the statement to Louis Inglesi
4 concerning prior dealings in narcotics. I asked Mr.
5 Phillips yesterday on the record before the closing of the
6 session whether the government intended to offer this
7 declaration, and Mr. Phillips indicated the government did
8 not. Probably for the very good reason that the Carmine --

9 THE COURT: I have no idea, but if he doesn't,
10 why worry about it?

11 MRS. ROSNER: Because that's not the end of the
12 problem, Judge. The Carmine who is the declarant of that
13 statement was not named as a co-conspirator in the bill of
14 particulars or the supplemental bill, and there has been
15 no scintilla of evidence as to this man in the conspiracy
16 thereto. The traditional hearsay rule would not be admissible.
17 I think Mr. Siegal takes a different position with respect
18 to the admissibility of that conversation. My position,
19 your Honor, is, it is inadmissible under any known exceptions
20 of the hearsay rule, and I would object to its being ad-
21 mitted either by the government or any co-defendant.

22 THE COURT: Mr. Siegal has a different position.

23 MR. SIEGAL: I think that any time the government
24 has anything in their files that might be exculpatory,
25 my defendant would be able to use it, and I refer your

1 hpp3

2 Honor to Chambers v. Mississippi, 35 Law Edition Second,
3 297, and I submit the language in this report is such that
4 it may negate the entire case against Tramunti, the entire
5 theory against Tramunti, and for that reason I most respect-
6 fully submit that we should be permitted to go into the
7 question.

8 THE COURT: Would someone be good enough to let
9 me see 3587.

10 (Handed to Court.)

11 MRS. ROSNER: Does your Honor wish to hear
12 argument on this?

13 THE COURT: I think you have made your point.
14 I am going to take a look at this particular case and see
15 if I understand Mr. Siegal's point.

16 MRS. ROSNER: I would add one other comment that
17 I have not mentioned to the Court. The actual in-court
18 source of this statement would be Agent Cassella. One
19 of the fundamental reasons why the defendant Inglese objects
20 to the admission of the statement is deprivation of the
21 right of confrontation. An individual named Carmine is
22 the one who related to Cassella what Inglese allegedly
23 told him, so that if your Honor allows this statement to
24 be admitted through the mouth of Agent Cassella, I am
25 totally deprived of the right of confrontation.

1 hpp4

2 THE COURT: I understand.

3 MRS. ROSNER: One other thing, your Honor. We
4 are in this posture not through any act of the defendants,
5 but through the government having joined for trial
6 individual with inconsistent defenses.

7 THE COURT: That happens all the time.

8 MRS. ROSNER: But when it does occur, your Honor,
9 the solution, I respectfully submit, is to sever their
10 trial so each defendant can admit what seems beneficial to
11 the trial of their own case without detrimental or deprived
12 of the right of confrontation to some other defendant.

13 MR. SIEGAL: For that reason, may I add this,
14 Judge, for that reason if you decide my application to go
15 into this situation, I am going to ask you for a severance
16 because we are then being put in a position of being denied
17 to produce exculpatory evidence which the government has
18 in their possession.

19 THE COURT: Now let me get back to where I was.
20 I gather Agent Cassella is going on, then Mr. Siegal and
21 possibly Mrs. Rosner are going to cross-examine.

22 MRS. ROSNER: I will not cross-examine unless
23 your Honor grants Mr. Siegal's application.

24 THE COURT: I am talking about possibilities
25 right now.

1 hpp5

2 MR. SIECAL: There is a possibility I may cross-
3 examine Agent Cassella.

4 THE COURT: All right, that hopefully will not
5 take up the rest of the afternoon. I gather then, just
6 as a guess of course, because I don't have any clair-
7 voyance, we will get down to the point where the government
8 will be calling those witnesses who testified about a certain
9 green suitcase which Mr. Lopez wanted to tuck under the
10 table, is that correct?

11 MR. PHILLIPS: Yes, your Honor.

12 THE COURT: And then, I assume, the government
13 will rest?

14 MR. PHILLIPS: That is correct, your Honor.

15 MR. ROSENBERG: I still have that open Wade
16 hearing.

17 THE COURT: I understand that, I'm just trying
18 to fit the pieces together. Mr. Lopez, unfortunately I
19 stuck you as the maitre d'. I must say you have had
20 a lot of good humor about it and I appreciate the way you
21 have handled it. If you could advise me what you expect
22 by way of time and order, after the defendants' case, then
23 maybe we can go from there.

24 MR. LOPEZ: Eight to ten lawyers will put on
25 a defense. That defense, your Honor, will last for about

1 hpp6

2 a week. I will try to arrange the scheduling so we have
3 back-up witnesses available. Of course, the problem could
4 be obviated somewhat, your Honor --

5 THE COURT: If I dismiss the indictment.

6 MR. LOPEZ: We don't expect that, your Honor.
7 I figure, your Honor, it will last a week with good
8 scheduling. That's at the most.

9 THE COURT: Are you going to try to work out the
10 scheduling for me?

11 MR. LOPEZ: Yes, your Honor. If the government
12 closes today, your Honor, I would make a suggestion that
13 we have Monday morning for defense attorneys to come here
14 Monday morning and then perhaps continue at 2.00 p.m.
15 I think that would help a great deal to move this swiftly.
16 We will be finished by Friday. I can then give your Honor
17 a schedule of the time element as far as each defense
18 lawyer is involved. That's just a suggestion.

19 THE COURT: All right, I'll think about it.

20 MR. LOPEZ: Thank you, your Honor.

21 THE COURT: I think cross will take us to the
22 break. Then we're right up against the money.

23 MR. DOWD: Your Honor, I would move to preclude
24 any offer of testimony by Cassella with respect to three
25 alleged sales between he and my client and John Barnaba on

1 hpp7

2 January 5th, 10th and 22nd, 1973, in light of the motion
3 that you have -- not the motion, but the decision you have
4 made with respect to my motion which is to join Count 26
5 to this case. I point out, your Honor, a defense in
6 respect to this particular testimony would involve my
7 client taking the stand, placing him in an impossible
8 position with respect to his Fifth Amendment rights at a
9 later trial, should he decide not to take the stand, and
10 therefore I would say my client would be denied his rights
11 under the Constitution, if such testimony were offered here
12 with the substantive count not being added and I would move
13 to preclude that testimony.

14 THE COURT: Motion is denied. My former ruling
15 stands.

16 Mr. Epstein, 312 is the place you think I ought
17 to concentrate on, on this?

18 MR. EPSTEIN: Yes, your Honor.

19 THE COURT: I will send the jury out here in five
20 minutes. Please be here.

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2 (In open court; jury present.)

3 THE COURT: All right, Mr. Engel.

4 MR. ENGEL: The government calls Mr.
5 Casella.6 ALB E I T C A S E L L A, J R., called as a wit-
7 ness by the government, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ENGEL:

11 Q Detective Casella, how are you employed?

12 A By the City of New York.

13 Q With what agency of the City of New York?

14 A Police Department, City of New York.

15 Q Is there a particular unit with which you are
16 associated?

17 A Yes, I am..

18 Q What is that?

19 A Major Investigations Section, Narcotics
20 Division.21 Q Did that used to be called the Special In-
22 vestigating Unit, the SIU?

23 A Yes, it was.

24 Q What rank do you hold now?

25 A Detective.

1 rka2 Casella-direct

2 Q Calling your attention to the month of
3 January, 1973, were you still employed?

4 A Yes, I was.

5 Q What rank did you hold then?

6 A Police officer.

7 Q On the night of January 5, 1973 were you on
8 duty?

9 A Yes, I was.

10 Q In an undercover capacity?

11 A Yes.

12 Q When you were employed in an undercover capacity
13 did you have a nickname?

14 A Yes.

15 Q What was that nickname?

16 A Allie Boy.

17 MR. SIEGAL: Can we have that again?

18 THE COURT: The nickname was Allie Boy.

19 Q Did a time come on the evening of January 5th
20 when you went to 2891 Zulette Avenue?

21 A Yes.

22 Q Where is that?

23 A In the Borough of the Bronx.

24 Q Who lives there, do you know, or lived there
25 at the time?

2 A A person I knew at that time by the name of
3 Frank Monaco.

4 Q What time did you arrive at that address?

5 A 8:30, 8:40.

6 Q On the night in question who was present
7 in the Monaco home?

8 A Myself, John Barnaba, Frank Monaco, Jeanie
9 Monaco and a person I knew at that time as Frankie.

10 Q Jean Monaco, is that Mr. Monaco's wife?

11 A That is correct.

12 Q Was she there the entire time you were there?

13 A She was for a partial time; then she went up-
14 stairs.

15 Q The man known to you as Frankie, did he arrive
16 after you arrived?

17 A Yes.

18 Q What time did he arrive, if you recall?

19 A Somewhat after 9 o'clock.

20 Q Did you come to know Frankie by any other
21 name?

22 A Yes, I did.

23 Q What was that name?

24 MRS. ROSNER: I will object, if the court
25 please. It calls for a hearsay response.

2 THE COURT: I will permit it. Go ahead.

3 Q You may answer.

4 A At a later time I knew him as Francis Russo,
5 Frank Russo.

6 Q Detective Casella, I will ask you to stand up,
7 please, and look around the courtroom and see if you can
8 see Frank or Francis Russo in the courtroom today and,
9 if you do, tell us what he is wearing and where he is
10 sitting.

11 A I have seen Francis Russo. He is over
12 here. He is wearing a gray suit.

13 MR. DOWD: I stipulate that is the de-
14 fendant Francis Russo.

15 Q Referring you back to the evening of January
16 5, 1973, was there a conversation between yourself and
17 the man known to you as Frankie, whom you have iden-
18 tified as the defendant Frank Russo, Frank Monaco and
19 John Barnaba?

20 A Yes.

21 Q Did all four participate?

22 A Yes.

23 Q Can you tell the court and jury, please, what
24 you said and what the others present said, to the best
25 of your recollection?

2 A Yes. I was introduced to this person
3 that night at Frank Monaco's house.

4 Q This person being?

5 A Frankie, and after the introduction the four
6 of us sat at the coffee table in the basement of Frank
7 Monaco's home.

8 I had a discussion with this person Frankie and
9 the others and I asked Frankie what he wanted for a half,
10 and also John Barnaba said the same thing.

11 Q What did --

12 MR. DOWD: Objection. May we have a side-
13 bar at this time?

14 THE COURT: All right.

15 (At the side bar.)

16 MR DOWD: Your Honor, the reason I asked for
17 the side-bar is because there would be a continuing objec-
18 tion in respect to testimony as to what John Barnaba
19 said.

20 John Barnaba has been a witness here and the
21 people had full opportunity to explore on direct examina-
22 tion any and all testimony and evidence he had to give
23 concerning this, and I think that is the proper course and
24 I would object to any offer of testimony as to what John
25 Barnaba said during these proceedings.

2 THE COURT: You can have the objection
3 but I will not sustain it.

4 (In open court.)

5 BY MR. ENGEL:

6 Q Detective Casella, you testified you asked
7 Frankie what he would want for a half. Did he respond?

8 A Yes.

9 Q What did he say?

10 A He said 19.5.

11 Q Did you say anything in response to that?

12 A I said, "That is pretty high."

13 Q Did you ask him anything thereafter?

14 A Yes.

15 Q What was that?

16 A After I told him it was a high figure. We
17 started to dicker over the price of the half and I told
18 him that it was pretty high, maybe I could get a quarter
19 off of him, and he thought that was pretty impossible
20 and that all he could do me right now would be a half, and
21 that he tried to sell quarters but he couldn't get them.

22 Q Did the defendant Frank Russo say at any time
23 what he was earning or what he would earn if he sold to
24 you?

25 MR. DOUD: Objection.

2 THE COURT: What was said?

3 Q Detective Casella, was there any further
4 conversation with respect to the price?

5 A Yes. He said he wasn't making that much on
6 this deal and that he may be just making a thousand
7 dollars, and that he wasn't coming down on his end, and
8 that maybe, just maybe, the other guy may come down
9 500, and that was up in the air at that time.

10 Q Was there any discussion about quality or
11 strength?

12 A Yes. As we kept talking I told him I would
13 be interested -- I was interested at that time in six or
14 seven, and he said he didn't think he could get me that,
15 but he was pretty sure he could get me a five.

16 Q What did you understand him to mean by a
17 five and what were you referring to when you said six or
18 seven?

19 MR. DOWD: Objection.

20 THE COURT: Sustained.

21 Q Detective Casella, have you ever heard,
22 with reference to narcotics, the expression "a six or a
23 seven"?

24 MR. DOWD: Objection.

25 THE COURT: You may answer yes or no.

1 rka

Casella-direct

3517

2 A When you refer --

3 MR. DOWD: Objection.

4 Q Just answer yes or no.

5 A Could you repeat the question.

6 THE COURT: Did you ever hear, in connection
7 with narcotics, the expression "a five" or "a six" or
8 "a seven"?

9 THE WITNESS: Yes, your Honor.

10 Q Had you heard other numbers used in the same
11 fashion with respect to narcotics?

12 A Yes; very common.

13 Q How many times would you say, roughly, and how
14 long have you heard these numbers used?

15 A For the last two and a half years that I have
16 been in the Narcotics Division.

17 Q Roughly how many times during those two and a
18 half years have you heard those numbers used?

19 A Numerous.

20 Q Now I ask you, Detective Casella, what did
21 you understand the defendant Frank Russo to mean when he
22 said a five or a six and what did you mean when you
23 said a six or a seven?

24 MR. DOWD: Objection.

25 THE COURT: I will permit it. Go ahead.

2 A I was referring to how many times the heroin
3 or the cocaine could be cut.

4 Q What do you mean by cut?

5 A How many times you can cut say 16 ounces.

6 If it's a five you can cut it and you would have
7 two halves which would be at 2-1/2 apiece, which would
8 total a five.

9 Q By the word "cut" what do you mean?

10 A Adding an additive like milk sugar or
11 annite into the base of the heroin.

12 Q On this occasion, January 5, 1973, did the
13 defendant Russo give you anything?

14 A Yes, he did.

15 Q What was that?

16 A A small tin foil packet containing white powder.

17 Q Did he say anything at the time that he gave it
18 to you?

19 A Yes.

20 Q What did he say?

21 A He told me this would be a sample of the stuff,
22 if I was interested, that I wanted to buy.

23 Q Did you see where he took the sample from on
24 his person?

25 A Yes. We were all sitting at the coffee table.

1. rka

Casella-direct

3519 -3520

2. He bent over, put his hand down and went into a small
3. part of his boot and removed this small packet.

4. Q Could you describe, please, the packet?

5. A I would say if you took a cigarette and cut
6. half of it and twirled the ends with aluminum foil, that
7. would be about it.

8. MR. DOWD: Objection.

9. THE COURT: I will permit it.

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2 MR. ENGEL: May this be marked as a Government
3 exhibit for identification.

4 (Government's Exhibit 89 was marked for
5 identification.)

xx 6 MR. ENGEL: May the record reflect I am now
7 cutting open a clear plastic envelope marked New York
8 Property Clerk Voucher No. 73N250, which has just been
9 marked as Government's Exhibit 89 for identification.

10 THE COURT: The record should also reflect that
11 the Assistant United States Attorney has withdrew from
12 Government's Exhibit 89 for identification, what appears
13 to be a brown lock-sealed envelope and also a white piece
14 of paper.

15 MR. ENGEL: I would like to mark both of those
16 as a Government exhibit for identification, 89-A and B --
17 just mark the lock-sealed envelope, if your Honor please.

18 (Government's Exhibit 89-A was marked for
19 identification.)

xx 20 Q Detective Casella, I show you what has been
21 marked as Government's Exhibit 89-A for identification
22 and ask you to look at it and examine it and tell us
23 whether you could identify it.

24 A I could identify it, yes.

25 Q How could you identify it?

2 A My signature appears on the back of the
3 envelope. Also my shield number underneath my signature.

4 MR. ENGEL: At this time, your Honor, I would
5 like to announce the stipulation entered into between
6 Government and the counsel for Mr. Russo.

7 THE COURT: Is that all right?

8 MR. DOWD: I would like him to open it.

9 THE COURT: Open the envelope, the lock-seal
10 envelope.

11 MR. ENGEL: May the record reflect I am now
12 opening the lock-seal envelope marked as Government's
13 Exhibit 89-A for identification and removing the contents
14 therefrom.

15 THE COURT: Which will be marked as 89-B.

16 (Government's Exhibit 89-B was marked for
17 identification.)

xx 18 Q Detective Casella, I ask you if this is the
19 envelope in which you placed the sample which you testified
20 you received from the defendant Frank Russo?

21 A Yes.

22 THE COURT: When you say "this" you are refer-
23 ring to 89-A, is that correct?

24 MR. ENGEL: That is correct, your Honor.

25 The stipulation is as follows:

2 The Government and the counsel for Mr. Russo
3 have entered into the following stipulation; that a New
4 York City Police Department chemist has examined the
5 contents of Government's Exhibit 89-B for identification
6 and that if he were here to testify, he would testify as
7 follows:

8 That Government's Exhibit 89-B contains one
9 foil packet containing a heroin compound and that the
10 weight of the compound is 2 grams and that there was
11 heroin present in the compound and that the percentage of
12 heroin present is 12.4 per cent, and it also is stipulated
13 between the Government and counsel for Mr. Russo, that an
14 ounce is 438 grams.

15 MR. DOWD: Just one amendment to the stipulation.

16 Mr. Engel referred to a heroin compound.

17 I understood the stipulation to delete the word "heroin".
18 It was a compound in which heroin was found to be present
19 in the amount of 12 per cent.

20 THE COURT: All right.

21 MR. SIEGAL: May we have at this time a
22 limiting instruction?

23 THE COURT: Yes.

24 At this point, this is being offered presently
25 against the defendant Russo and it is not to be considered

1 ks4 Casella-direct

2 as against any other defendant.

3 MR. ENGEL: At this time the Government offers
4 Government's Exhibit 89 for identification, 89-B for
5 identification.

6 MRS. ROSNER: I would object, your Honor, lack
7 of connection.

8 THE COURT: I understand.

9 (Government's Exhibit 89-B was received in
10 evidence.)

xx 11 Q Detective Casella, you testified that you
12 examined the package on the evening of January 5, 1973.

13 Did you thereafter agree to meet at some point
14 in the future?

15 A. Yes, we did.

16 Q. Was there conversation about that meeting?

17 A. Yes.

18 Q. Can you tell us what you said and what the
19 defendant Russo said?

20 A. After I received the sample, I told Frankie
21 that I would have to have it checked out and that I was
22 going away that weekend and that I couldn't do nothing
23 then but maybe that coming Monday possibly; so he told
24 me it would have to be a definite yes or no.

25 Q. That was Monday, January 9?

2. A Yes. We were talking about that.

3. Q Did you meet the defendant Russo on January 9,
4. 1973?

5. A Yes, I did.

6. Q Where did that meeting take place?

7. A At the same place, Frank Monaco's home.

8. Q At 2891 Zulette Avenue?

9. A That is correct.

10. Q Who was present?

11. A Myself, John Barnaba, Frank Monaco and Frankie.

12. Q Was Frankie there when you arrived?

13. A No, he was not.

14. Q Was there a conversation between you and Mr.
15. Monaco when you arrived?

16. A Yes.

17. Q What was said?

18. A Myself and John Barnaba arrived and Frankie
19. wasn't there. In the house was some kind of a relative
20. to Frank Monaco, whose name was, I think, Richie.

21. After Frank Monaco informed me that Frankie
22. wasn't here, I sent this Richie out to look for him.

23. Q Did Frank Russo ever appear that night?

24. A Yes, he did, later on that evening.

25. Q What time was that?

2 A I would say roughly around 9.30, 9.40.

3 Q Did you have a conversation with the defendant
4 Russo?

5 A Yes, I did.

6 Q What did you say and what did he say?

7 A After he arrived, I said I am ready, are you,
8 and he was a little surprised, like he wasn't ready to do
9 anything that night --

10 MR. DOWD: Objection. It is a characteriza-
11 tion. I ask it be stricken.

12 THE COURT: Just ignore the last part of it,
13 what he looked like. This is not to be considered by
14 you.

15 Tell us what you said and what you did.

16 A (Continuing) After this I told him can we do
17 anything tonight and he said he doubts it very much.
18 It was pretty late and he didn't think we could do any-
19 thing.

20 Q Did you have money on you at that point?

21 A Yes, I did.

22 Q How much money did you have?

23 A \$20,000, United States currency.

24 Q Where did you get the money?

25 A Earlier in the evening Sergeant Martin O'Boyle

2 gave it to me.

3 Q Where did he give it to you?

4 A At a motel out in Queens.

5 Q Was that the base of your operations?

6 A At that time it was.

7 Q Did you at any time inform Russo that you had
8 the money?

9 MR. DOWD: Objection.

10 A Yes, I did.

11 MR. DOWD: I am sorry, your Honor.

12 THE COURT: The biggest problem is the reporter's
13 not being able to see you.

14 It is a little weak but I will let it stand.

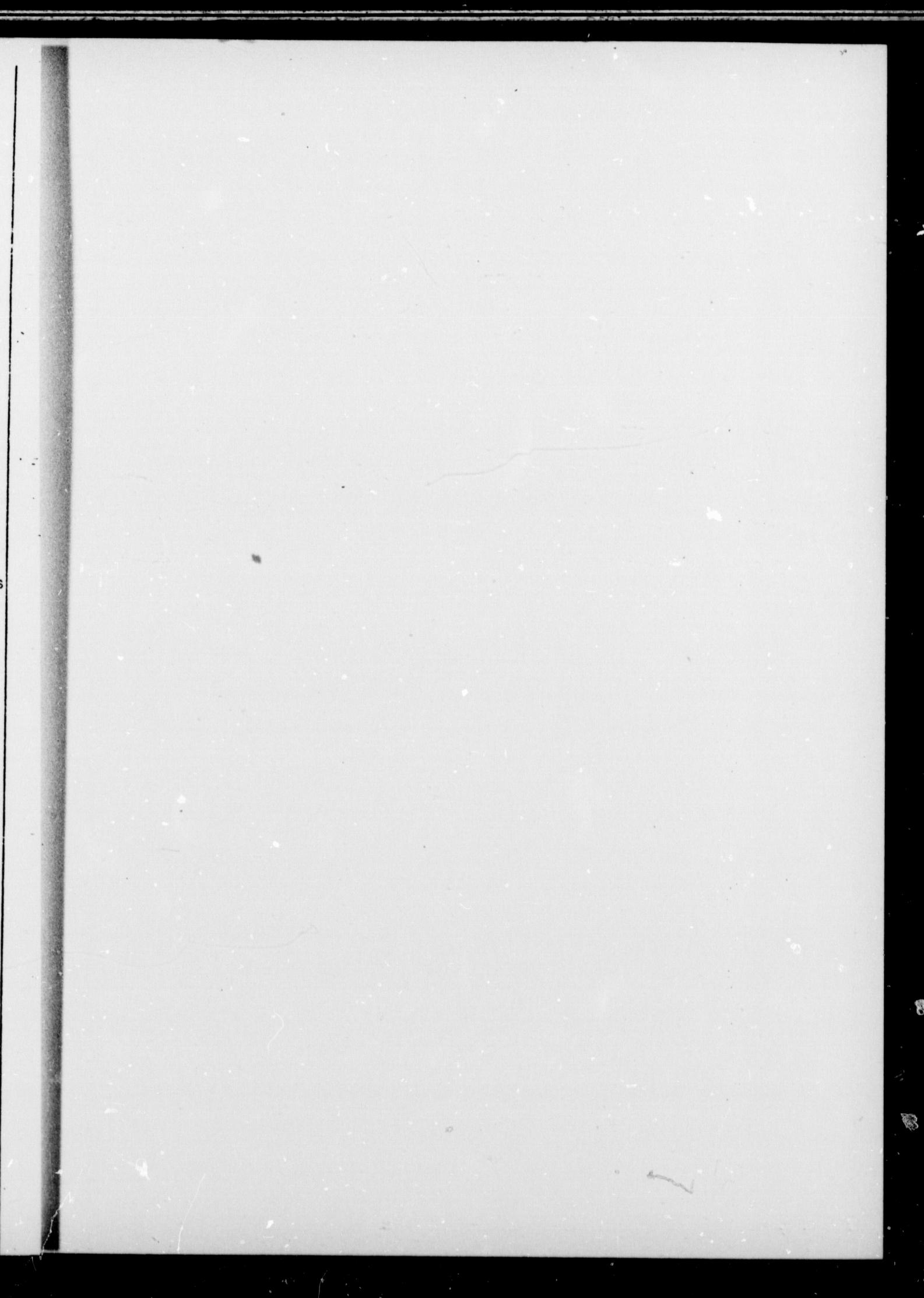
15 Q Did you at any time show Frankie the money,
16 the defendant Russo?

17 A After I informed him I was ready, I took the
18 money out from underneath my coat and I opened the bag up
19 a little bit and I said well, here it is, let's go.

20 Q Did he say anything in reply?

21 A After I showed the money at the table, Frank
22 Monaco said, come on, let's go. He said I don't know,
23 I will check it out but if we can't do it tonight, there
24 is a very good chance we can do it tomorrow.

25 THE COURT: When you said, "He said" who are



2 you referring to?

3 THE WITNESS: Frankie.

4 THE COURT: That is the defendant Frank Russo
5 or Frank Monaco, which one?

6 THE WITNESS: Frank Russo, your Honor.

7 Q And did the defendant Frank Russo later leave the
8 apartment or the house?

9 A Yes, he did leave the house.

10 Q Before he left, did he say anything?

11 A He said he was going to see if we could do any-
12 thing tonight, but if not, definitely tomorrow, but he
13 would start tonight.

14 Q Did he return?

15 A Yes, he did.

16 Q How much later was that?

17 A Maybe approximately to 40 minutes.

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2 Q When he returned, did you have a conversation?

3 A Yes, we did.

4 Q What was said, if you recall?

5 A Well, when he returned, we all went back to the
6 coffee table, and he informed me that it was no go tonight
7 and that he could do it tomorrow night. So, we sat down
8 and discussed where we would meet and what time we would
9 meet to do it the following day.

10 Q On this occasion that he returned, did you dis-
11 cuss the quantity of the drugs to be delivered?

12 A Yes.

13 Q What was said, if you can recall, in that con-
14 nection?

15 A Well, I told him that I was giving him a lot of
16 money and I expected at least a full package, or near 17
17 ounces. He said he couldn't guarantee me 17 ounces but he
18 would guarantee me at least 16, and I told him, well,
19 everything from 17 down, I'm losing money on it and I would
20 like to get as much as I could of it.

21 He said he would see and I asked him would he
22 do me a favor before giving it to me, would he weigh it,
23 and when I bought it off him that night at least tell me
24 how much I got and he agreed.

25 Q And did you agree to meet again?

1. hpp2

Casella-direct

2. A Yes.

3. Q When did you agree to meet, that is to say, at
4. what time in the future did you agree to meet?5. A On the 9th, January 9th, which we're talking
6. about, after the discussion about the weight and everything
7. like that, we agreed on a meeting place.

8. Q Where was that?

9. A Well, I offered the question would he like to go
10. to Korvette's parking lot on Bruckner Boulevard, and White
11. Plains in the Bronx.12. He agreed and he said, "All right, we'll meet
13. there, but we'll have to meet in the rear of the parking
14. lot near Nedicks Hot Dog Stand, way in the back," and I
15. agreed. I said, "Okay, that's fine, fine with me," and we
16. set up a tentative time for about 9.15, 9.20.17. Q Did you thereafter leave the house with Frank Russo
18. and John Barnaba?19. A Yes. After this discussion of setting up the
20. meeting and everything for the 10th, the three of us left
21. Frank Monaco's residence and we were outside on the side-
22. walk and we had another conversation.

23. Q What was that conversation?

24. A Well, as soon as we left Frank Monaco's residence,
25. his home, we informed Frankie we would like to have the
deal just the three of us, to leave Frank Monaco home on

1. hpp3 Casella-direct

2. account Frank Monaco wants to come with us.

3. Q Directing your attention to the evening of
4. January 10, 1973, did you meet Frank Russo that night?

5. A Yes, I did.

6. Q Where did you meet him?

7. A At Korvette's parking lot in the Bronx, the
8. prearrangement spot.

9. Q And when you arrived was he already there?

10. A No.

11. Q Where was he?

12. A His car was parked directly in front of Nedicks
13. Hot Dog Stand in the rear of Korvette's parking lot.

14. Q What kind of car was he driving, if you can
15. recall?

16. A I believe it is a 1967 Pontiac white convertible.

17. Q And the license plate, do you recall?

18. A I believe it's 7574 XL New York.

19. Q After you arrived in front of Nedicks, what
20. happened?

21. A As I was proceeding into Korvette's parking lot,
22. I was driving John Barnaba's car, I pulled up John Barnaba's
23. car directly behind Frank Russo's car, which was at the
24. Nedicks stand.

25. Q And did you thereafter get out of your car?

1. hpp4 Casella-direct

2. A Yes, I did. I got out of John Barnaba's car and
3. proceeded to walk up a few feet and into Frank Russo's car.

4. Q Was there any conversation when you entered his
5. car?

6. A Yes, there was.

7. Q Will you tell us what he said and what you said?

8. A I got into his car, I closed the door, I said,
9. "Hi, Frankie." And he said, "Hi."

10. He said, "You got the money?" And I said,
11. "Yes."

12. Q How much money did you have on this occasion?

13. A \$19,500 United States Currency.

14. Q Did you get the money in the same way you testified
15. about the previous evening?

16. A The same way, brown paper bag.

17. Q From Sergeant Martin O'Boyle?

18. A Yes.

19. Q What happened after you got in the car?

20. A I got in the car, Frank Russo put the car into
21. gear and he drove up maybe a hundred, two hundred feet, and
22. made a sort of a lefthand U-turn about 270-degree U-turn.
23. Now the car was facing frontwards, facing the Nedicks stand,
24. and John Barnaba's car, and we were in the dark.

25. Q Did he stop his car at this point?

1 hpp5 Casella-direct

2 A Yes, he did.

3 Q What happened then?

4 A Well, he stopped his car, put it into Park, and
5 I gave him the paper bag with the money inside.

6 Q After you gave it to him, what did he do?

7 A Took the paper bag from me, ripped the paper bag
8 open and began to count the money.

9 Q How long did it take him to count the money?
10 Excuse me, withdrawn.

11 Q How did he count the money, if you recall?

12 A At the first outset very rapidly.

13 Q With his hand?

14 A Yes. He would count it on his lap in the sense
15 peeling off denominations in his lap, and every once in a
16 while he would hold his head and look at his fingers and
17 count.

18 Q How long did it take him to count the money,
19 if you recall?

20 A I would say three to five minutes, somewhere
21 around that.

22 Q When he finished, did he say anything to you?

23 A Yes.

24 Q What did he say?

25 A He said, "You're a hundred short."

1 hpp6 Casella-direct

2 Q Did you have occasion to say anything to him
3 when he said that?

4 A Yes. I said, "You had to mess up, it's all there
5 count it again."

6 Q Did he count it again?

7 A Yes, after a little while he kept saying, "No,
8 I'll take your word for it," and I said, "You don't have
9 to take my word for it, it's all there," and the second time
10 he did count it, and a lot slower.

11 Q What did he do when he finished counting it?

12 A As he was counting it, he would take so many
13 denominations, fold them and put them into his boots.

14 Q Did he put all the money in his boots?

15 A No, he put some in his boots and put some into
16 the coat.

17 Q Was there any conversation at this point after he
18 finished counting the money?

19 A Well, after he finished counting the money, he
20 says, "I'll take your word for it, I had a bad night,"
21 and this and that, and "It's all right, don't worry about
22 it."

23 I said, "Well, it's there, you don't have to
24 worry about it, it's all there." I says to him, "Where are
25 we going to go?"

1. hpp7

Casella-direct

2. He says, "Not far."

3. Q What happened then?

4. A Well, we pulled up alongside of John Barnaba's
5. car. We rolled down the window and we told John Barnaba
6. that we weren't going that far and just for him to keep his
7. eyes open.

8. Q And where did you go after that?

9. A Well, after leaving John Barnaba's car, we drove
10. along the walkway like, adjacent to the sidewalk where the
11. traffic goes.2. 12. Q And this walkway, was that adjacent to the parking
13. lot?14. A Yes, sir, all the storefronts have like a big
15. wide sidewalk that you can walk along the stores and look
16. into them.17. MR. ENGEL: May this be marked as government's
18. exhibit for identification, please.x. 19. (Government's Exhibit 90 marked for
20. identification.)21. Q Detective Casella, I show you what has been
22. marked Government's Exhibit 90 for identification and ask
23. you whether you can identify what is portrayed in the photo-
24. graph?

25. A Yes, I can identify it.

1 hpp8 Casella-direct

2 Q And what is it?

3 A This picture here represents a picture of --

4 MR. DOWD: Objection, your Honor, to the witness
5 showing the photograph to the jury. He is turning it --

6 THE COURT: He shouldn't be doing that. Keep
7 it to yourself right now.

8 THE WITNESS: Yes, your Honor.

9 Q Describe what it is, please.

10 A This is E.J. Korvette's in the Bronx on Bruckner
11 Boulevard, White Plains Road.

12 Q Do you see a bus in the picture?

13 A Yes.

14 Q Just above that bus, do you see a horizontal line
15 across the picture?

16 A Yes.

17 Q What is that line, if you can tell?

18 A That's the pedestrian walkway that runs adjacent
19 to all the stores down there.

20 MR. DOWD: I withdraw my objection, your Honor.

21 THE COURT: Take a look at the picture.

22 (Handed to Mr. Dowd.)

23 MR. ENGEL: The government offers Exhibit 90
24 for identification.

25 MR. DOWD: No objection.

1 hpp9

Casella-direct

2 THE COURT: Received.

xx 3 (Government's Exhibit 90 received in
4 evidence.)

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2 Q This walkway which you have just identified
3 in the picture, did you drive near that walkway?

4 A Yes, we drove adjacent to it in the street.

5 Q At that point did you have any conversation
6 with the defendant Russo?

7 A Yes. We were driving very slow in that area
8 there and as we were proceeding along Frank Russo told me
9 that early in the evening he seen a couple of cars and
10 he seen this same car twice that evening, and that a
11 couple of times during that night he was going to cancel
12 everything out; he just didn't want to do it.

13 Q Did he say why?

14 A Well, he was afraid that there may be police,
15 there may be anything, but he was scared.

16 Q Did you have occasion to ask him for anything
17 at this point?

18 A Well, after he told me this I turned around to
19 him and I said, "Well, you knew this and you're still
20 doing it here."

21 And he says, "No -- well, maybe it's my
22 imagination. I wasn't too sure."

23 I said, "Well, you shouldn't bring them here."

24 He said, "Don't worry, I haven't seen them in
25 a while."

2 Q Did he have occasion to give you anything
3 on this occasion?

4 A After this little, brief conversation the
5 car came to a halt in the parking area and I says to him,
6 "Where is it?"

7 He says, "Under your seat."

8 I didn't hear him the first time and I said,
9 "What?" and he said, "Under your seat."

10 So I reached underneath the passenger seat
11 where I was sitting and I pulled out this brown paper bag.

12 MR. ENGEL: May this be marked as a govern-
13 ment's exhibit for identification.

14 (Government's Exhibit 91 marked for identi-
15 fication.)

16 MR. ENGEL: Your Honor, may the record show
17 that I am now cutting open a clear plastic envelope marked
18 "Property Clerk," voucher No. 73N526, and removing --

19 THE COURT: Also marked Government's Exhibit
20 91?

21 MR. ENGEL: Yes, your Honor, Government's
22 Exhibit 91 for identification -- and removing therefrom
23 a lock-seal envelope, which I also request be marked.
24 That would be Government's Exhibit 91A, I believe, for
25 identification.

2 (Government's Exhibit 91A marked for iden-
3 tification.)

xx 4 THE COURT: Let the record reflect there is
5 a piece of white paper on 91 for identification also.

6 BY MR. ENGEL:

7 Q Detective Casella, I show you Government's
8 Exhibit 91A for identification and ask you whether you
9 can identify it.

10 A Yes, I can identify it.

11 Q How can you identify it?

12 A It has my signature on the back and under-
13 neath my signature is my shield number.

14 MR. ENGEL: May the record reflect that I
15 am now opening the lock-seal envelope marked Government's
16 Exhibit 91A for identification. May this be marked as
17 Government's Exhibit 91B for identification.

18 (Government's Exhibit 91B was marked for
19 identification.)

xx 20 MR. ENGEL: May the record reflect also I
21 removed from Government's Exhibit 91A a clear plastic
22 bag.

23 THE COURT: Which is marked Government's
24 Exhibit 91B now.

25 Q Detective Casella I show you Government's

1 hpa4

Casella-direct

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2 Exhibit 91B and ask you whether you can identify it.

3 A Yes.

4 Q Is Government's Exhibit 91A the envelope in
5 which you placed Government's Exhibit 91B?

6 A Yes, I did place this in a self-locking en-
7 velope.

8 MR. ENGEL: I would like to announce the stipu-
9 lation --

10 THE COURT: What is Government's Exhibit 91B?
11 What is it?

12 Q Will you describe Government's Exhibit 91B?

13 A It is a plastic bag, taped up, white powder
14 inside of it. On the side where the tape is there is
15 some numbers, 479MJB.

16 THE COURT: All right. When did you first
17 see that?

18 THE WITNESS: I got back to John Barnava's
19 car, I opened it up and looked inside.

20 THE COURT: You opened up the brown paper
21 bag?

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Was that package, 91B, inside
24 the brown paper bag?

25 THE WITNESS: Yes.

1 hpa 5

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2 THE COURT: Now put the stipulation.

3 MR. ENGEL: The government and counsel for

4 Mr. Russo stipulate that a New York City Police Department

5 chemist has examined Government's Exhibit 91B and that

6 if he were here to testify he would testify that Govern-

7 ment's Exhibit 91B is a package containing a substance

8 weighing 16-3/4 ounces and 85 grains, and that the

9 substance contained heroin and that the percentage of

10 heroin in the substance is 9.3 per cent.

11 THE COURT: Are you offering it?

12 MR. ENGEL: The government offers 91B.

13 THE COURT: Any objection.

14 MR. DOWD: No objection.

15 THE COURT: Does anyone else have any objec-

16 tion other than the usual ones as to relevancy and not

17 binding on your client?

18 All right, received.

19 Q On this occasion of January 10, 1973 did

20 you have yet a further discussion with defendant Russo

21 after he handed you the package or about the same time

22 he handed you the package?

23 MR. DOWD: Objection.

24 THE COURT: I will permit it.

25 A Would you repeat the question, please.

2 Q Did you have a conversation at or about the
3 time that you were handed the package by defendant Russo?
4 Did you have a conversation with him?

5 A Yes, we did.

6 Q Can you recall, please, what he said and what
7 you said?

8 MR. DOWD: Objection. Asked and answered.

9 THE COURT: I will permit it. Go ahead.

10 A I told Frankie again about the weight and
11 I said, "Did you check it out?"

12 He said, "No," he didn't have a chance with
13 everything going on that night with these cars, and
14 that, again, he was going to cancel it.

15 I said, "Well, what am I going to do?"

16 He says, "I know you got the weight." He
17 says, "If it's under 16, or something like that, I'll
18 straighten it out myself with you."

19 So I said, "Okay."

20 Q After January 10, 1973 did you thereafter have
21 occasion to see the defendant Frank Russo again?

22 A Yes.

23 Q When was that, if you recall?

24 A On January 15th.

25 Q How did that meeting come about?

2 A Through some phone calls that John Barnaba
3 made to him?

4 A Where did you meet on this occasion?

5 A Again at Frank Monaco's house.

6 Q Who was present?

7 A Myself, John Barnaba, Frank Monaco and Frank
8 Russo.

9 Q Did you have occasion to discuss or have a
10 conversation with those gentlemen you just mentioned?

11 A Yes.

12 Q Can you tell us what was said by you and what
13 was said by the others?

14 A Well, I told Frank Russo --

15 MR. DOWD: Your Honor, may we have a
16 date for this?

17 THE COURT: I thought it was January 15th
18 but I might be wrong. I'm not sure.

19 MR. DOWD: January 15th?

20 MR. ENGEL: I'm not going to testify,
21 your Honor.

22 THE COURT: Nor am I. All right.
23 What was the date on this?

24 THE WITNESS: January 15th, your Honor.

25 Q You testified you did have a conversation.

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2 Can you tell us, please, what was said by you and what
3 was said by the others present?

4 A Yes. I told Frank Russo that the stuff I
5 bought off him on the 10th was very weak and I was a
6 littel aggravated and upset over the whole thing and I
7 wanted to know if he could straighten it out or something.
8 And he says, he told me he didn't believe that, and I
9 says, "Well, I'm telling you, I had it checked out
10 and it's very low quality."

11 And he says, "Well, I don't know, maybe
12 your people or somebody did something to it." "and somethin'
13 I says, "No way, my people didn't do anything
14 to it."

15 He says, "Well, I don't know what I can do,
16 I ain't making much money on this deal and I can't okay
17 it anyway, I have to go see somebody."

18 Q ---Now, Detective Casella, did you have occasion
19 to meet the defendant Russo on January 16th?

20 A Yes.

21 Q Where was that?

22 A At Frank Monaco's home.

23 Q When did you arrive, if you recall?

24 A About maybe 10 to 9, quarter after 9.

25 Q Would you tell us who was present?

2 A Myself, John Barnaba, Frank Monaco and Frank
3 Russo.

4 Q Did you have a conversation on that evening?

5 A Yes, we did.

6 Q What was said, if you can recall?

7 A Well, I told Frank Russo how did he make out
8 about getting something to tighten up the package. He
9 said he was pretty sure I was going to get the ounce to
10 tighten it up.

11 Q Did you agree to meet thereafter?

12 A Yes, we did. Yes, we did

13 Q On what date did you agree to meet?

14 A Well, it was all agreed at the table that we
15 would meet January the 18th at Frank Monaco's house again,
16 but we have been meeting there so often we says --

17 MR. DOWD: Objection, your Honor.

18 THE COURT: Just tell us what was said.

19 A Myself, I said to Frank Russo, "We've been
20 meeting there so often and nothing is coming to avail, how
21 about we call you first and we'll see how we can make out?"
22 and he agreed.

23

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2 Q When was the next time you saw Frank Russo?

3 A January 22nd.

4 Q Where was that?

5 A Zulette Avenue and Edison Avenue in the Bronx.

6 Q Is that near the home of Frank Monaco?

7 A Yes, about five houses off the corner.

8 Q When did you arrive, if you recall?

9 A Around 8 o'clock.

10 Q Were you in the company of anybody else?

11 A I was driving and I was in the company of
12 John Barnaba.

13 Q Did the defendant Russo appear?

14 A Yes, he did.

15 Q What time was that, if you recall?

16 A Shortly after 8 o'clock. Maybe 10 after,
17 20 after.

18 Q Did you see what kind of car he was driving
19 on that occasion?

20 A Yes.

21 Q What kind of car was that?

22 A 1967 Pontiac.

23 Q After he arrived can you tell us, please, what
24 happened?

25 A Yes.

2 He arrived, John Barnaba was outside the
3 car. My car was parked on Edison Avenue and Frank
4 Russo parked his car on Zulette Avenue. John Barnaba
5 walked from my car down the block, maybe 80, 90 feet, and
6 got into Frank Russo's car, in the passenger side. He
7 was in there maybe five or six minutes.

8 Q Did you thereafter have occasion to speak with
9 Frank Russo?

10 A Yes. After a while that conversation with
11 John Barnaba, Frank Russo got out of his car and proceeded
12 to walk up Edison to where I was parked.

13 Q Did he on this occasion give you anything?

14 A Yes, he did.

15 Q What did he give you?

16 A When he came alongside of my car, I rolled down
17 the driver's side of the window and he went into his
18 coat, took out a small paper, brown bag and passed it from
19 the window inside the car. I took the bag off him, looked
20 at it, pulled the contents out and put it back.

21 Q Did he say anything to you when he handed you
22 the package?

23 A Yes. He told me he was sorry there was such
24 a long delay and that he just couldn't help it.

25 MR. ENGEL: May this be marked, please, as

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2 a government exhibit for identification.

3 (Government's Exhibit 92 was marked for iden-
4 tification.)

xx 5 MR. ENGEL: May the record reflect I am
6 cutting open a plastic bag marked Government's Exhibit
7 92 and another plastic bag attached thereto, and that I
8 am removing the contents of one of those plastic bags and
9 removing the contents of the other.

10 May these be marked as Government's Exhibits
11 for identification.

12 (Government's Exhibit 92A and 92B were marked
13 for identification.)

14 Q I show you Government's Exhibit 92B for
15 identification and ask you, Detective Casella, whether
16 you can identify it.

17 A Yes, I can identify it.

18 Q -- Can you tell us how you can identify it?

19 A My signature appears on the rear of it and my
20 shield number below my signature.

21 MR. ENGEL: May the record reflect I am
22 opening Government's Exhibit 92B and removing the contents
23 therefrom.

24 Q Detective Casella, is Government's Exhibit 92B
25 the envelope in which you placed the contents of the paper

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2 bag which you testified Frank Russo gave to you on the
3 evening of January 22, 1973?

4 A Yes

5 MR. ENGEL: Your Honor, I would like to
6 read the stipulation entered into between counsel and the
7 government.

8 THE COURT: Have we the contents marked yet?

9 ME. ENGEL: I am sorry.

10 May the contents be marked as Government's
11 Exhibit 92C for identification.

12 (Government's Exhibit 92C was marked for
13 identification.)

xx 14 THE COURT: Detective Casella, Government's
15 Exhibit 92C, was that contained in the brown paper bag
16 that was given to you on that night that you testified
17 about?

18 THE WITNESS: It contains --

19 THE COURT: Was that in the brown paper bag?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Read the stipulation.

22 MR. ENGEL: The government and counsel for
23 Mr. Russo have entered into the following stipulation:
24 That a New York City Police Department chemist has
25 examined the contents of Government Exhibit 92C and that

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2 if he were here to testify he would testify that the
3 package contains one ounce and 10 grains of weight and
4 that the compound therein contains heroin and the per-
5 centage of heroin is 10.6 per cent.

6 The government offers Government's Exhibit 92C
7 for identification into evidence.

8 MR. DOWD: I have an objection.

9 THE COURT: Come on up.

10 (At the side bar.)

11 MR. DOWD: I made an objection last time and
12 you overruled me. I just made an objection.

13 THE COURT: Your objection is overruled at
14 this time also.

15 MR. PHILLIPS: We are offering this evidence
16 just against Russo, but we are offering it against every-
17 body.

18 THE COURT: I am well aware of it.

19 MR. PHILLIPS: You advised the jury that
20 it is being offered against Russo.

21 THE COURT: Now.

22 MR. PHILLIPS: We are offering it against
23 everybody now.

24 THE COURT: Subject to connection, is that
25 correct?

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2 MR. PHILLIPS: That is correct, but we submit
3 it has been connected up at this point.

4 THE COURT: No. Connection comes in after
5 the jury is convinced of certain things. I am not going
6 to say it is connected up. I am just going to say it
7 is coming in subject to connection.

8 MR. PHILLIPS: Subject to the jury's finding
9 a conspiracy existed --

10 THE COURT: I will not go through all that
11 right now. That is part of the charge.

12 MR. PHILLIPS: You charged them that this
13 was only coming in against Russo.

14 THE COURT: Now.

15 MR. PHILLIPS: It is coming in against every-
16 body subject to connection.

17 MR. EPSTEIN: I object to that. I ask
18 the same limiting instruction be given now as has been in
19 the past.

20 MR. DOWD: I objected to all three of them
21 formally.

22 (In open court.)

23 MR. ENGEL: Your Honor, I have no further
24 questions at this time but would like to reserve my right
25 to recall the witness if your Honor were inclined to have

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2 a recess at this point.

3 THE COURT: All right. Go ahead, ladies
4 and gentlemen, with the marshal.

5 (The jury left the courtroom.)

6 (Government's Exhibit 92C was received in
7 evidence.)

xx 8 MR. DOWD: Your Honor, I would like nobody
9 else in the courtroom to remove themselves from where they
10 are sitting before the recess is over because I have a
11 special application, with the exception of the wit-
12 ness.

13 THE COURT: Go back to the witness room,
14 please.

15 (The witness left the courtroom.)

16 MR. DOWD: I would just like the record to
17 reflect that Agent Moore is sitting directly behind my
18 client in the courtroom and I would ask your Honor to
19 direct him, when the recess is over, to come back and
20 sit in exactly the same place, directly behind my client.

21 MR. ENGEL: Your Honor, I would ask for a
22 reason for that.

23 THE COURT: I don't know what the reason
24 is.

25 MR. DOWD: For possible use in cross examina-

2 tions, and I would like the facts as they were in the
3 courtroom at the time the witness was examined on direct
4 examination to be noted in the record and I would like them
5 to be the same, if possible, when I cross examine.

6 THE COURT: I count five rows.

7 MR.DOWD: Five rows back, but in a direct
8 line.

9 THE COURT: There are various and sundry other
10 people sitting in the area. I don't know if it's
11 directly behind or not.

12 MR. DOWD: I would invite your Honor to stand
13 over here and look.

14 THE COURT: Don't make me do any physical
15 work.

16 Agent Moore, when you come back would you
17 sit back there. I don't know what this is going to do
18 to cross examination. Lord knows.

19 Mrs. Rosner, you wanted to add something, some-
20 thing that nobody else has said?

21 MRS.ROSNER: I hope not, that it hasn't been
22 said before.

23 THE COURT: Let's hear it.

24 MRS. ROSNER: Very briefly, your Honor, I
25 guess the two-pronged determination which your Honor is

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2 required to make in considering the admissibility of the
3 evidence is, on the one hand, what its probative value would
4 be to the establishment of various elements of the
5 offense that the government charged and, secondly, that
6 the prejudice would be weighed against its admissibility.

7 With respect to the probative value, I think
8 as concerns the defendant DiNapoli, the largest sum of
9 money which could be possibly attributed to him as a result
10 of these alleged narcotics transactions would be a
11 figure of approximately \$60,000 at the absolute outside,
12 probably more accurately \$20,000, so the relationship of
13 the million dollars to that sum is out of proportion and
14 really has no probative value.

15 On the other side of the coin, your Honor,
16 the prejudice really has to be considered in light of the
17 fact that this is not a one-defendant case but an 18-
18 defendant case.

19 THE COURT: Seventeen now.

20 MRS. ROSNER: Thank you.

21 Were this a situation where Mr. DiNapoli alone
22 was on trial, your Honor might have a far easier burden
23 in weighing the factual prejudices. This seizure was
24 directly from Mr. DiNapoli. The other prejudice is to
25 the other 16 defendants as to which the money has no factual

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2 connection.

3 During Agent Casella's testimony reference
4 was made to the fact that \$20,000 in currency was displayed
5 to another do-defendant on trial on January 15th, and I
6 noted your Honor as to that testimony was coming into the
7 record that Juror No. 11 visibly winced at the very mention
8 of a much lesser figure than \$20,000.

9 I submit, your Honor, that the impact of this
10 evidence is not going to shed light on the jury's de-
11 liberation, but is going to create the kind of heat and
12 prejudice and lack of clarity which we are all seeking to
13 avoid.

14 MR. ELLIS: Your Honor, may I be heard on
15 that?

16 MR. LOPEZ: I haven't been heard either.

17 THE COURT: -- Mr. Lopez, you have been heard
18 to great lengths and unless you are going to add something
19 new that I haven't heard before, please don't.

20 -- MR. LOPEZ: Yes, but I will add something
21 new.

22 THE COURT: Okay.

23 Yes, Mr. Ellis.

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2 MR. ELLIS: In addition to that which was
3 previously said, I would also like to point out that the
4 million dollars is not competent to establish any element
5 of the conspiracy charged.

6 The sample charge, the draft charge read to us
7 by your Honor recognized that the gist of the offense is
8 the agreement itself.

9 I, of course, recognize that to the extent the
10 purpose of the conspiracy was consummated, the Government
11 could show it. However, there is nothing in this record
12 that would justify the jury in finding that that money,
13 that that vast sum which has been dwelled upon at length
14 up to this point is in any way connected with this crime
15 or this conspiracy as against any other crime or any other
16 conspiracy, and I would also like to point out, your Honor,
17 that the Government has stated on this record that it is
18 not their that this money is irrelevant to establish the
19 means to accomplish the ends of this conspiracy, but,
20 rather, that it was in fact the fruits of the conspiracy.

21 The cases that they cite all show substantial
22 evidence in the record connecting the money, the recent
23 fruits of the crime with the criminal activities which
24 were the subject of that prosecution.

25 There is no such connection in this case.

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2 Certainly not to the extent of a million dollars worth,
3 and I am deeply concerned, your Honor, at this overflow
4 of prejudice that was referred to by other counsel.
5 I too urge it be excluded.

6 THE COURT: Mr. Lopez?

7 -MR. LOPEZ: Your Honor, originally when the
8 Government intended to offer the 1 million dollars, it
9 submitted four reasons to you, Judge Duffy, why it should
10 be admitted. They claimed that Harry Pannirello will
11 testify in mid-December of 1971 he purchased one kilogram
12 of heroin from DiNapoli for \$22,000. This was a manifest--
13 as far as the testimony is concerned, there is no testimony
14 as far as Harry Pannirello purchasing anything from Joseph
15 DiNapoli.

16 - Second, that Harry Pannirello and defendant
17 Frank Pugliese had been receiving heroin from DiNapoli for
18 a long period of time. This again was not shown by the
19 evidence.

20 - Three, that Harry Pannirello would testify
21 that Pugliese claimed to have paid DiNapoli \$10,000 cash
22 shortly before mid-December, 1971 on the sale of heroin.
23 This was not the evidence of the case.

24 - The overall proof of the Government laying a
25 foundation for the receipt of the money, your Honor, is

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2 clearly unfounded and therefore, does not warrant the
3 offer of this money.

4 We have several reasons why we feel this money
5 should not be offered.

6 One, your Honor, there is no factual foundation
7 for the introduction of the money. There has been no
8 proof of prior economic status and no proof of sudden
9 acquisition of wealth as far as DiNapoli is concerned.

10 There has been no connection between the money
11 that is being offered and this criminal conspiracy.

12 The Court well knows that this money is being
13 by other agencies in connection with other matters,
14 possibly other conspiracies, possibly other cases, your
15 Honor, therefore I think that the million dollars here is
16 wholly unconnected, unrelated and there is no criminal
17 nexus between this case and narcotics and any other cases
18 for that matter.

19 Your Honor, our judicial system has a basic
20 mistrust for the jury receiving certain types of facts.
21 I submit to your Honor that the mistrust is greatest in
22 this type of a case where we are giving them 1 million
23 dollars to speculate on where there is no direct proof
24 that this million dollars is connected or in any way
25 related to this case.

2 Four, your Honor, the Government by the intro-
3 duction of this evidence, places the burden on us of
4 explaining the 1 million dollars so the jury need not
5 speculate.

6 Five, your Honor on February 3, 1973, the
7 Government claimed that DiNapoli had been arrested on this
8 case. We claimed a speedy trial issue and we asked
9 for the dismissal of the indictment against DiNapoli
10 because of their failure to afford him a speedy trial
11 because if it is their contention on February 3, 1972, the
12 criminal prosecution as triggered against DiNapoli, he
13 wasn't indicted until some time later and I think we have
14 a speedy trial issue here.

15 Your Honor, on January 4, 1973, Joseph DiNapoli
16 was actually sentenced for Shylocking and on that date,
17 the Government well knew about the seizure of February
18 3, 1972 in connection with the money. At that time, an
19 Assistant United States Attorney appeared before Judge
20 MacMahon and indicated that this defendant had been
21 involved in hundreds of thousands of dollars of loan-
22 sharking and now on another case in which they are now
23 claiming that this type of money is being used for
24 narcotics, so they have it all the way and on both
25 ways.

2 At the time of the seizure of the million
3 dollars, I think the facts would indicate as your Honor
4 is aware from the suppression motion, that no narcotics
5 were seized. Furthermore, your Honor, the Government is
6 guilty in this case of bootstrapping. It attempts to
7 prove the conspiracy by the fact that DiNapoli and Papa
8 had 1 million dollars and on the other hand, because they
9 had 1 million dollars, they must be guilty of the con-
10 spiracy.

11 There are about 10 or 15 cases I could review
12 for your Honor. Williams against the United States,
13 Falley, Tirikian. A lot of cases, your Honor, which
14 are subject to interpretation.

15 I can give them all to your Honor in a brief
16 but basically I want to cite to your Honor one thought.

17 Earl Warren when he presided as Chief Justice
18 of the Supreme Court used to say the following thing when
19 he got tired of hearing all the cases, and what he used to
20 tell lawyers there both for the prosecution and defense
21 lawyers, I want to know one thing, the judge used to say
22 in the Mother Goose language, is it fair, is it fair for
23 the Government in this case to offer a dare to your Honor
24 by opening up the 1 million dollars when your Honor told
25 them until I have a factual foundation for this money,

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2 I am not going to rule on it as far as relevancy, and now
3 to try to introduce this 1 million dollars weeks later,
4 isn't fair under all the circumstances when the most that
5 has been shown against DiNapoli based on hearsay testimony,
6 no direct testimony, no non-hearsay testimony, that at
7 most he could have been involved with was \$66,000.

8 Now they throw 1 million dollars on us and
9 they tell us cross-examine that. What will the impact
10 of that be on the jury? I say they will entirely specu-
11 late on this matter without the Government ever having
12 needed to prove that this money is in any way related to
13 narcotics. This is the bad man theory that the Supreme
14 Court condemned, that Learned Hand has condemned, that
15 Judge Cardoza has condemned and the Supreme Court since
16 Williams against United States in 1967.

17 THE COURT: There is another question outstand-
18 ing and that involves whether Mr. Siegal on behalf of
19 the defendant Tramunti can cross-examine this detective
20 in connection with a statement contained in 3587 which
21 refers, from what I gather to a conversation with one
22 Fat Carmine, whoever Fat Carmine is.

23 You claim, Mr. Siegal, you claim this would in
24 some way exculpate your client in this connection?

25 MR. SIEGAL: Yes, which is the very issue of

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2 this trial, whether or not there was that conversation
3 between Inglesi and Tramunti. The entire trial revolves
4 about that as far as Trumunti is concerned.

5 THE COURT: In these situations, what I have
6 to do basically is a weighing procedure, and I believe that
7 this is a matter that Mrs. Rosner would object to and I
8 would assume she would and I would sustain her objections
9 to it, therefore I suggest you don't try to go into it.

10 MR. SIEGAL: In view of your ruling, if your
11 Honor please, and denying us the right to go after some
12 exculpatory testimony which is in the hands of the
13 Government, I now most respectfully move for a severance.

2 14 THE COURT: I guessed you had. I was going
15 to get to that.

16 MR. SIEGAL: That is the motion.

17 THE COURT: If you don't get the severance, you
18 move for a mistrial and both of those motions are denied.

19 MR. SIEGAL: I will most respectfully ask the
20 Government to give us the name and address of this so-
21 called Fat Carmine.

22 THE COURT: If they know about it.

23 MR. PHILLIPS: We will be happy to give the
24 name and address. He has the name. The name is
25 Carmine Miranda. The address if we have it we will.

2 give it to Mr. Siegal. I think he can best get it from
3 Mr. Rogers' office.

4 THE COURT: If you have it, give it to him.

5 MR. PHILLIPS: May I be briefly heard on the
6 question of the million dollars, and that is, that we submit
7 that it is not prejudicial because it is probative and in
8 addition to the authorities we cited in our trial memo-
9 randum and the oral argument that was made some time ago
10 because trial started and our support is based on United
11 States versus Kenny in the Third Circuit and United States
12 versus Jacksonian in the Second Circuit.

13 I would also like to point to the fact that
14 the testimony of Tennessee Dawson was to the effect that
15 he said Pugliese had told him that he owed up to as much
16 as a hundred thousand dollars to his man or source and
17 the testimony further showed that the only individual whose
18 name Pugliese gave to Dilacio and Pannirello before he
19 went to jail was the person from whom they were to get
20 their narcotics was Joseph DiNapoli.

21 In addition to the factual basis which we
22 offered before trial, that we submit we did meet for the
23 testimony of Pannirello, that is, the money going to
24 DiNapoli from Pugliese up at Bronxdale Avenue at Joe
25 DiNapoli's girl friend's house.

2 THE COURT: All right, take ten.

3 MR. LEIGHTON: How late will we work today?

4 Is there a maximum hour?

5 THE COURT: I am going to work as long as I
think the jury can sit and still absorb, okay?

6 MR. LEIGHTON: Would you work past six o'clock?

7 THE COURT: I doubt it.

8 MR. LEIGHTON: Thank you.

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10 (Recess.)

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Casella-direct

2 MR. SIEGAL: May we have a side bar conference?
3 (At the side bar.)

4 THE COURT: You should note Mr. Martin J. Siegel
5 is present here now. Mr. Siegel has indicated to me he
6 is willing to stipulate if a New York chemist was called,
7 he would testify as to certain things as set forth on a
8 piece of paper Mr. Engel presently held. However, he
9 wants the record to reflect most clearly that he is not
10 admitting in any way by that stipulation that his defendant
11 did in fact possess the items which Sergeant O'Boyle testi-
12 fied to today, nor is he waiving any of his rights on
13 appeal in connection with the possibility of suppression
14 of that evidence, and its objectional nature in this
15 trial.

16 MR. SIEGEL: My only concern finally is,
17 when Mr. Engel introduces the items into evidence, he will
18 read the stipulations as far as is the chemist is concerned.
19 Mr. Engel and I also have entered into a stipulation where
20 Mr. Engel has agreed he will not be opening up the packages
21 of evidence, but it has been stipulated if the packages
22 were to be opened, certain items of contraband would be
23 found in there. However, again, Mr. Springer is not con-
24 ceding that he had possession.

25 THE COURT: You are not waiving any rights in

1 hpp2

Casella-direct

350,

2 connection with that?

3 MR. DOWD: I intend at this time on cross-
4 examination to ask Casella whether he was aware that
5 defendant Russo had ever been arrested or convicted of a
6 crime involving narcotics prior to January, 1970.

7 THE COURT: You are going to ask that question?

8 MR. DOWD: This is the point I want to make.
9 It is my contention that does not open up the door to them
10 asking him about any prior convictions because the record
11 provided to me by the government, the rap sheet indicates
12 a misdemeanor conviction, one misdemeanor, perhaps two,
13 in unrelated areas prior to this, which I understand they
14 would not ordinarily be able to impeach my client with and
15 since it doesn't bear -- I'm only talking about narcotics --
16 they should not be permitted on redirect to enter into
17 another area other than narcotics.

18 THE COURT: I don't know what the two misdemeanors
19 are.

20 MR. DOWD: I think one was possession --

21 THE COURT: Hyperdermic needle?

22 MR. DOWD: No, nothing drug-related. You can
23 get the copy of the rap sheet. I just want to make sure
24 we don't have any misunderstanding.

25 THE COURT: Let me take a look at it. The rap

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Casella-direct

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sheet shows the way I read it, one conviction, policy.

3

MR. DOWD: Yes.

4

THE COURT: For which he got 15 days.

5

6

MR. DOWD: And \$150 and which in the Federal Court, they would not be able to impeach.

7

THE COURT: Yes, all right.

8

9

MR. ENGEL: Your Honor, could you tell the jury, to save time, there was a conference to save time.

10

THE COURT: Yes..

2

11

MR. SIEGAL: With reference to my application for name and address, for Fat Carmine, or whatever it is, I received the information as Carmine, 110 Webster Avenue, Harrison, New York, brother-in-law's house, 3467 Eastchester Road, Apartment 5-B. With further reference to my application, I want to make an offer of proof so that the record will be clear as to my position. If Mr. Casella takes the stand and I was permitted to question him, and I would ask him the following questions: On January 15, 1973, did you accompany a confidential informant and go to a bar known as the Web Bar on Eastchester Road off Boston Road in the Bronx. Did you there meet John Louie, and after you met John Louie, I would ask Mr. Casella, whether or not he met a John Doe known as Fat Carmine. I would then ask him if he had a conversation with Fat Carmine and

1 hpp4

Casella-direct

3500

2 whether or not Fat Carmine told Mr. Casella and the informant
3 that he, Carmine, met about two weeks ago one Louis Inglesi
4 of 2025 Continental Avenue, Bronx, New York, and that
5 Carmine asked Inglesi if he had any heroin around and
6 Inglesi replied by saying, Inglesi said to Carmine that
7 he was not going to touch any heroin for some time and that
8 he, Carmine, should look for another connection.

9 MRS. ROSNER: I would object to those questions
10 if Mr. Siegal asks them.

11 THE COURT: I understand.

12 MR. EPSTEIN: Your Honor, it is the intention
13 of the defendant Tramunti to subpoena the witness Carmine
14 Miranda for Thursday morning. The original question I want
15 to bring to the Court's attention, in view of what is set
16 forth in the 3500 material, there is reason to believe Mr.
17 Miranda also has a case pending somewhere. If the govern-
18 ment knows the identity of his lawyer, because we are
19 bound by the New York State Canon of Ethics, and if he
20 has counsel retained or assigned, we would have to know
21 and notify counsel.

22 THE COURT: I understand.

23 MR. CURRAN: I'll doublecheck it, and if we do
24 know, I'll tell it to you.

25 MR. EPSTEIN: If you can check, if he has a case

1 hpp5

Casella-direct

2 pending.

3509

3 MR. CURRAN: I don't know.

4 (In open court.)

5 THE COURT: Ladies and gentlemen, I'm quite
6 sure, being normal human beings, you would like to crawl
7 over there and find out what was going on at the side
8 conference. Right now we were trying to save time this
9 afternoon which maybe we did. Would you get the witness,
10 please.

11 A L B E R T C A S E L L A, resumed.

12 BY MR. ENGEL:

13 Q Detective Casella, you were placed under oath before
14 and that oath remains. Directing your attention to the
15 evening of December 3rd, 1973, did there come a time when
16 you went to 3139 New England Thruway?

17 A Yes.

18 Q Were you on duty that night on a major investiga-
19 tion in the same section?

20 A I was.

21 Q Were you in an undercover capacity that
22 evening?

23 A No.

24 Q Could you tell us whether you were accompanied
25 by anybody else?

1 hpp6

Casella-direct

3574

2 A Yes. I was accompanied by three other persons?

3 Q Who were they?

4 A Sergeant Martin O'Boyle, Detective Joseph Wysocki
5 and Detective John Sheehan.

6 Q What time were you there?

7 A Five o'clock to eight o'clock.

8 Q When you drove to 3139 New England Thruway, did
9 you go up via the New England Thruway?

10 A Yes, we did.

11 Q Could you describe, please, the relationship, if
12 any, of the New England Thruway on which you drove, to the
13 address, to the road which is described as 3139 New England
14 Thruway?

15 A It's adjacent to the parkway.

16 Q Is it a service road of some sort?

17 A Yes.

18 Q When you went up the New England Thruway, what
19 exit did you take to 3139 New England Thruway?

20 A The exit we got off was Baychester Avenue.

21 Q Is that in the vicinity of 233rd Street in the
22 Bronx?

23 A It's within that area.

24

25

2 Q When you arrived did you notice anything
3 in front of the house?

4 A Yes.

5 Q Tell us what you saw.

6 A I seen in front of 3139 New England Thruway
7 either a '71 or '72 Cadillac Eldorado white convertible.

8 MR. SIEGEL: Objection, your Honor.

9 THE COURT: Sustained. Did you go into
10 the building?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Go ahead.

13 Q Now, after you went into the building did you
14 have occasion then to leave --

15 MR. SEGAL: I withdraw that.

16 Q Did you at any time leave the building and
17 return?

18 A Yes, I did.

19 Q And the second time you went in could you
20 tell us who was present in the apartment?

21 A List the persons?

22 Q Yes, please.

23 A Well, there were my partners in there, plus
24 Sergeant O'Boyle, a black male, two black females and two
25 children.

1 hpa2

Casella-direct

357.1

2 Q Did you know who the person who you referred
3 as a black male -- did you know his identity?

4 A Yes.

5 Q Who was that?

6 A John Springer.

7 Q I will ask you please to remain at your seat
8 and stand up and look around the courtroom and see whether
9 you can see the person you have named as John Springer.

10 THE COURT: Stay where you are. See if
11 you can point him out.

12 A He is right there, next to the lady.

13 THE COURT: All right, sit down.

14 Q At this apartment at 3139 New England Thruway
15 did you observe an animal of some sort?

16 A Yes.

17 Q What was that animal?

18 MR. SIEGEL: Objection, your Honor.

19 THE COURT: I will permit it.

20 A A large great Dane dog.

21 Q Did you converse at all with Sergeant O'Boyle
22 within the apartment?

23 MR. SIEGEL: Your Honor, if I can interrupt
24 Mr. Engel at this time. May we have a side bar at this
25 time?

2 THE COURT: Let's go through with it and
3 then we'll go to the side bar.

4 Q Did you at any time converse with Sergeant
5 O'Boyle?

6 THE COURT: Answer yes or no.

7 A Yes.

8 Q As a result of those conversations did you
9 have occasion to collect and mark any items found
10 in the apartment?

11 A Yes.

12 Q Tell the court and jury, please, what items
13 you collected and marked, to the best of your recollection?

14 A Well, there was a lot of items in the kitchen,
15 dining room area that I did mark and I did place into a
16 small bag that we rounded up, the contraband.

17 Q Could you tell us what it was you did collect
18 and mark?

19 A There were numerous aluminum foil packs with
20 white powder, a plate with white powder and a strainer,
21 two small measuring teaspoons, another box with a name on
22 it, I think it said "Mannite" on it, with light powder
23 on there.

24 Q Were there any other items which you seized?

25 A I may have seized other items but this I refer

1 hpa4 Casella-direct

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2 right off the top of my head.

3 THE COURT: Would you come up now.

4 (At the side bar.)

5 THE COURT: The person identified by the
6 witness as the defendant John Springer is in truth or in
7 fact --

8 MR. LEIGHTON: Warren Robinson.

9 THE COURT: Is that what you wanted?

10 MR. SIEGEL: Yes.

11 THE COURT: I was going to put that in.

12 Can we have the stipulation and finish with that.

13 MR. SIEGEL: Yes.

14 THE COURT: Mark the exhibits then.

15 (In open court.)

16 BY MR. ENGEL:

17 Q Detective Casella, you recall that I asked
18 you a few moments ago, when you looked around the court-
19 room, whether you saw a man identified to you as John
20 Springer. Having identified the defendant Warren
21 Robinson --

22 MR. SIEGEL: Objection, your Honor.

23 Q -- as John Springer, I ask you to stand up --

24 THE COURT: No, no, no.

25 MR. SIEGEL: Your Honor, I move for a mis-

1 hpa5

Casella-direct

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2 trial.

3 THE COURT: Motion for mistrial denied also.

4 MR. ENGEL: At this time I would like to
5 announce the stipulation entered into --

6 MR. SIEGEL: Your Honor, have you ruled on
7 my objection?

8 THE COURT: Yes. Sustained. I
9 might have said, "No, no, no," but it gets the same message
10 across.

11 MR. ENGEL: Certain plastic bags marked
12 "Property Clerk Voucher No. 73N175911," and I believe
13 there are five, but those packages, they are all in property
14 clerk envelopes --

15 THE COURT: Can we have them marked as one
16 exhibit.

17 MR. ENGEL: They are marked consecutively
18 93 through 97 for identification and it has been stipulated
19 between the government and the attorney for defendant John
20 Springer that if these envelopes were opened they would
21 contain the following: 5/8ths of an ounce and 37 grains
22 of mannite, four foil packets containing 20 grains of a
23 substance of which 1.0 per cent was heroin, one foil packet
24 containing 1/2 an ounce plus 27 grains of a substance of
25 which 7 per cent is heroin, one foil packet containing 1/8th

1 hpa6

Casella-direct

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2 of an ounce and 47 grains of a substance of which 11.6
3 per cent was cocaine, one foil packet containing 11
4 grains of a substance of which 25.9 per cent was cocaine,
5 and the following items in which no control substance
6 for narcotic was found, to wit, one paper packet labeled
7 "Mannite," and one foil-covered plate, one empty foil
8 packet and two measuring spoons.

9 MR. SIEGEL: One further point, your Honor,
10 which was agreed to at the side bar and that is the defendant
11 Springer does not concede possession of these items.

12 THE COURT: I understand that, yes.

13 Do you have any further direct?

14 MR. ENGEL: We have no further questions.

15 THE COURT: Ladies and gentlemen, let me
16 just mention something which I am going to talk to you about
17 at great length in the charge, but I want you to think about
18 it right now. The various items which you heard just
19 described as coming from bags --

20 MR. ENGEL: Five, your Honor.

21 THE COURT: Those five bags are not to be
22 considered by you in your deliberations as far as the
23 conspiracy count of this indictment is concerned in any
24 way, shape, manner or form. Those are received solely
25 as against the defendant Springer. I will describe this

1 hpa7

Casella-direct

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2 at great length later but I just don't want you to in any
3 way think they have anything to do with the conspiracy
4 count. They don't.

5 MR. ENGEL: Your Honor, may these be offere
6 at this point?

7 THE COURT: Yes. I assume that you objec
8 to the offer but I will receive it anyway.

9 (Government's Exhibits 93 through 97 were
10 received in evidence.)

xx

11 MR. PANZER: Your Honor, I have just one
12 question.

13 CROSS EXAMINATION

14 BY MR. PANZER:

15 Q Sir, you testified about a location 3139 New
16 England Thruway, is that correct?

17 A Yes.

18 Q You said when you arrived at that location
19 you saw two black females, is that right?

20 A Yes.

21 Q Would you kindly point out if you see those
22 two black females in the courtroom for us?

23 A I don't see them.

24 MR. PANZER: Thank you.

25

1 hpa8

Casella-cross

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2 CROSS EXAMINATION

3 BY MR. DOWD:

4 Q Detective Casella, you met with Frank Russo on
5 several occasions, did you not?

6 A I did.

7 Q Subsequent to those occasions did you ever
8 see Frank Russo between January 22nd and today's date?

9 A No.

10 Q Do you know Agent Moore, Special Agent Moore?

11 A No, I don't.

12 Q There came a time when you were assigned to
13 work with an agent or informant by the name of John
14 Barnaba, correct, during the period December, 1972?
15 '73 or '72?

16 MR. DOWD: I'm trying to get my years
17 straight, Judge.

18 I think December, '72.

19 Q December, '72?

20 A Yes.

21 Q When did you begin working with this informant
22 or agent, if you know the date?

23 A I believe some time in November.

2 Q Some time in November?

3 A THE COURT: It's November, '72.

4 A Yes.

5 Q How long did you work with this informant or
6 Agent Barnaba from November, 1972 in an undercover capacity?

7 MR. ENGEL: Objection as to form.

8 THE COURT: Go ahead.

9 A I believe to October of '73.

10 Q Did he introduce you to a number of people?

11 A Yes, he did.

12 Q During this period of time?

13 A Yes.

14 Q As Allie Boy?

15 A Yes.

16 Q Was the purpose of that introduction to see
17 if he could get them to sell narcotics to you?

18 A Yes.

19 Q Isn't it true that sometimes you succeeded
20 and sometimes you failed, is that correct?

21 A That is correct.

22 Q Had you ever met Frank Russo prior to January
23 5, 1973?

24 A Never.

25 Q Had John Barnaba talked to you about him prior

1 rka2

Casella-cross

2 to January 5, 1973?

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3 A Not by name.

4 Q Did he mention Frankie?

5 A Frank Monaco mentioned Frankie, yes.

6 MR. DOWD: I ask that be stricken as not re-
7 sponsive.

8 THE COURT: I will strike it. Make sure
9 you don't use the pronoun.

10 Ladies and gentlemen, ignore the last
11 answer.

12 Q To your own knowledge, do you know if John
13 Barnaba had conversations with Frank Russo prior to your
14 meeting with Frank Russo on January 5, 1973 during the
15 month of December, 1973 -- 1972; I am sorry?

16 Do you understand the question?

17 A No, I don't.

18 Q Let me rephrase it.

19 Prior to your meeting Frank Russo do you know
20 of your knowledge whether John Barnaba had had conversa-
21 tions with Frank Russo during the month prior to your
22 meeting with Frank Russo?

23 A During just the month of December?

24 Q The month of December and up to January 5,
25 1973. Do you know if he had spoken to him?

1 rka3

Casella-cross

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2 A Just the one month, December, you are talking
3 about?

4 Q December, '72 up to January 5, 1973.

5 A I really don't know.

6 Q By the way, when you were working with John
7 Barnaba as an informer and confidential agent working for
8 the Police Department were you with him at all times?

9 A Not at all times. no.

10 Q Was he in protective custody?

11 A You mean physically protected by the police?

12 Q Yes.

13 A No.

14 Q In other words, at times when he wasn't working
15 with you he was free to do what he wanted, correct?

16 A Yes.

17 Q On the evening of January 9, 1973 you and John
18 Barnaba left from a motel in Queens to meet Frank Russo,
19 correct?

20 A Correct.

21 Q Prior to leaving that motel was John Barnaba
22 searched?

23 A Yes.

24 Q What was the purpose of that search, if you
25 know?

1 rka4

Casella-cross

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2 A It is a standard procedure.

3 Q What was the purpose of the search, if you
4 know?

5 A Well, to make sure there was no contraband on
6 him prior to any negotiation or transaction in narcotics.

7 Q Is that because you wanted to guard against
8 the possibility that he might meet a supplier of narcotics
9 in a particular case?

10 MR. ENGEL: Objection.

11 THE COURT: He already answered the ques-
12 tion. The rest of it is argument.

13 Q You testified about leaving the same motel
14 on the evening of January 10, 1973, correct?

15 A Yes.

16 Q The evening you met the defendant Russo at the
17 Korvette parking lot?

18 A Yes.

19 Q Was John Barnaba searched on that evening?

20 A Yes, he was.

21 Q Tell me about January 5th. Did you and John
22 Barnaba also leave from the motel in Queens together
23 to Frank Monaco's house?

24 A We may have, yes.

25 Q Was he searched that evening?

2 A No.

3 Q On the 22nd of January, 1973 did you and John
4 Barnaba leave from the motel in Queens to go meet Frank
5 Russo that night?6 A I believe so. I am not that sure, but I
7 believe so.8 Q Was John Barnaba searched prior to leaving the
9 motel that night?

10 A I would have to say yes.

11 Q During a period from the 1st of December to
12 January 22nd was John Barnaba working as an agent of the
13 New York City Police Department?

14 A During that period, yes.

15 Q Was part of your function as an undercover
16 officer assigned to him to remind him of the penalties he
17 faced if he didn't cooperate fully with you?

18 A Myself to keep reminding him?

19 Q To let him know if he wasn't assisting you
20 and helping you out on the street, that he would face
21 serious penalties.

22 A I am pretty sure he had that impression.

23 THE COURT: The question is did you say it
24 to him on a number of occasions?

25 A I may have said it once or twice, sure.

1 rka6

Castella-cross

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2 Q Would you have said something in substance to
3 the effect that "John, you have to produce for us out
4 on the street if you want us to help you in respect of
5 your case," something to that effect? - - -

6 A If he wanted to help himself, yes.

7 Q In other words, your interest was simply while
8 you were working on this case, working with John Barnaba,
9 to purchase narcotics, correct? - - -

10 A In one sense, yes.

11 Q When these bags that you allegedly received
12 from Frank Russo, when they were taken by you, I assume
13 they were taken to the property clerk's office? - - -

14 A No, they were taken to the police laboratory.

15 Q Do you know if any fingerprint analysis was
16 made on any of these packages? - - -

17 A Yes. - - -

18 Q Do you have the results of that analysis?

19 THE COURT: I don't know whether that
20 "Yes" is yes, he knows --

21 A Yes, I do know it was done.

22 Q In which instance? - - -

23 A I believe on the half kilogram of heroin.

24 MR. DOWD: May we have a side-bar at this
25 time?

1 rka7

Casella-cross

2 THE COURT: Yes.

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3 (At the side bar.)

4 MR. DOWD: My contention is if they were
5 negative, that tends to exculpate the defendant and I
6 should have been informed of the analysis.

7 THE COURT: What about the analysis?

8 MR. ENGEL: I know that an analysis was
9 performed on one of the packages. Which, I don't know.
10 I don't know, I don't have the results of that. I
11 suggest if Mr. Russo wants to know the result he ask the
12 witness.

13 THE COURT: That is like playing with
14 dynamite.

15 MR. DOWD: Or worse. I would use the
16 word "atomic bomb."

17 We made motion for scientific analysis and
18 reports and I think we were granted those.

19 THE COURT: I thought you were too. I
20 have forgotten exactly what it was.

21 MR. DOWD: Let me ask you a simple cure.

22 Out of the presence of the jury, can we ask
23 him? If the answer is no, that is all I want anyway.

24 MR. PHILLIPS: Call him over to the side
25 bar. I have no objection.

1 rka8

Casella-cross

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2 MR. DOWD: Officer, do you know the re-
3 sults of the fingerprint analysis?

4 THE WITNESS: Do I know the results?

5 MR. DOWD: Do you know what the results?

6 THE WITNESS: I don't think they picked up
7 any prints on the paper.

8 MR. DOWD: It was negative?

9 THE WITNESS: I would say it was negative.

10 THE COURT: Go back on the stand. We
11 will ask the question.

12 (In open court.)

13 BY MR. DOWD:

14 Q Officer, you told us there was a fingerprint
15 analysis made?

16 A That is correct.

17 Q Do you know the results of that test?

18 A I am of the understanding they cannot pick up
19 any prints.

20 Q As to the other two items that have been
21 introduced into evidence, no test was made?

22 A It is not a procedure on that, no.

23 Q You testified in relation to your experience
24 as a narcotics officer earlier, do you remember that?

25 A A little bit, yes.

1 rka9

Casella-cross

359

2 Q As an undercover narcotics officer, it is
3 important for you to be able to judge the man that you
4 are working with, the informant or the agent, correct,
5 as to how good he is, correct?

6 A I wouldn't judge a man how good he is in that
7 sense.

8 Q I mean how effective an informant he is.

9 A I don't think it is for myself to judge how
10 effective an informant is. I think I have superiors
11 that would do that.

12 Q You were aware, were you not, that John Barnaba
13 had a long record in respect to narcotics involvement,
14 weren't you?

15 A I worked on John Barnaba's case, yes.

16 Q Oh, you did.

17 Based on your observations of John Barnaba
18 did you find him, either in your investigation or in your
19 dealings with him, to be -- if Mr. Engel would wait for
20 me to finish the question --

21 THE COURT: I am waiting myself.

22 Q -- did you find him to be a very shrewd --
23 and I will use the word "man" -- very shrewd man with what
24 you would call in the vernacular being street smart?

25 MR. ENGEL: Objection.

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Casella-cross

350

2 THE COURT: Sustained.

3 Q In your experience with John Barnaba did
4 you find him to be entirely conversant with the slang
5 used in narcotics transactions?

6 A You mean could he speak the slang?

7 Q Yes.

8 A I think he had a general working knowledge
9 of it.

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Casella-cross

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2 Q As you worked with the man as an informant or
3 as an agent, a man who has been termed, is it important
4 for him as far as you are concerned to be able to fool
5 other people?

6 MR. ENGEL: Objection.

7 THE COURT: Sustained.

8 Q During the period from December 1, 1972 to
9 January 22, 1973, was John Barnaba's phone tapped?

10 THE COURT: I am sorry?

11 Q Was John Barnaba's phone tapped?

12 MR. ENGEL: Object to the relevancy.

13 THE COURT: Do you want to read that back?

14 (Question read.)

15 THE COURT: I will permit it.

16 A Could you give me the dates again?

17 THE COURT: December through January.

18 Q December 1st, 1972 through January 25, 1973, if
19 you know.

20 A 1972 to 1973?

21 Q December 1st, 1972 to January 25, 1973.

22 A I think it was tapped in the early
23 part of 1972, yes.

24 Q I don't think you understand my question.

25 Beginning in the month December 1st, 1973 in

1 ks2

Casella-cross

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2 about the time you started to work with him -- '72, I am
3 sorry.

4 - You started to work with John Barnaba about
5 December of 1972, correct?

6 THE COURT: I think he said November before.

7 Let's take it from during the month of December 1972, was
8 John Barnaba's phone tapped, if you know?

9 A December of L972?

10 Q That is right.

11 A I believe so.

12 THE COURT: During the month of January, 1973,
13 was his phone tapped?

14 - THE WITNESS: January 1973?

15 THE COURT: Yes.

16 THE WITNESS: No.

17 THE COURT: It was not?

18 THE WITNESS: Not to my knowledge.

19 Q And you told us just prior to this that John
20 Barnaba during the period of time that you worked with
21 him, ending January 25, 1973, was not under constant
22 surveillance, correct?

23 A Could you rephrase that question or say it over
24 again?

25 THE COURT: he told us that he was not in

2 protective custody and he was free to come and go as he
3 pleased, is that correct?

4 THE WITNESS: Yes.

5 THE COURT: When he came and went as he pleased,
6 did anybody go follow him, keep him under surveillance?

7 THE WITNESS: Are we talking about when his
8 phone was tapped or not tapped?

9 THE COURT: We don't care about the phone right
10 now.

11 MR. DOWD: . Regardless --

12 THE COURT: At the time he was working with you
13 in an undercover capacity he was free to come and go as
14 he pleased, right?

15 THE WITNESS: That is correct.

16 THE COURT: When he went, do you have anybody
17 surveilling him, following him where he went?

18 THE WITNESS: When he was working with us,
19 sometimes we would, yes.

20 Q When he wasn't working with you?

21 A Are you trying to say when he is not with me or
22 when he is not with the team?

23 Q When he is not with the team and not with you?

24 A Is anybody surveilling him?

25 Q Yes

2 A I would say to the best of my knowledge, I would
3 say no, but they may be.

4 Q Of your own knowledge, do you know whether
5 John Barnaba supplied the narcotics which you allegedly
6 received from Frank Russo?

7 A Absolutely not.

8 Q You don't know?

9 A Are you trying to tell me --

10 Q I am not trying to tell you anything. I am
11 asking you a question.

12 Do you know of your own knowledge whether
13 John Barnaba supplied the drugs that were allegedly given
14 to you by Frank Russo on January 5, 1973, January 10,
15 1973 and January 22, 1973?

16 A Did John Barnaba give them to me on those
17 specific dates?

18 THE COURT: Did he give it to Russo on those
19 dates?

20 THE WITNESS: Did he give it to Russo?

21 THE COURT: Yes.

22 Q Do you know if he supplied the drugs that you
23 received?

24 A That is not too clear.

25 THE COURT: Answer the question.

2 Q Do you know of your own knowledge whether he
3 supplied the drugs that you received from Frank Russo?

4 A To the best of My ability, no.

5 Q Do you know whether he supplied them indirectly?

6 A As far as my knowledge goes, no.

7 Q But you weren't with John Barnaba at all times,
8 were you?

9 A Of course not.

10 Q And there were periods of time when he was out
11 free to do as he wanted to do, correct?

12 MR. ENGEL: Your Honor, I object.

13 THE COURT: Yes. We have gone through this
14 once.

15 MR. DOWD: No further questions.

16 THE COURT: Anybody else wish to inquire?

17 MR. ENGEL: Your Honor, I have a few.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

XX 20 BY MR. ENGEL:

21 Q Detective Casella, you were just asked whether
22 you knew whether John Barnaba's phone was tapped in
23 December of 1972 and you testified you believed so.

24 Are you sure his phone was tapped in December
25 of 1972, yes or no?

2 Casella-redirect

3504

4 A 1972 going into '73?

5 Q I am talking about the month of December, 1972,
are you sure that John Barnaba's phone was tapped?
6 A No, it was not tapped.7 Q Did John Barnaba ever introduce you to a man
named Frank Stasi as Alje Boy?
8 A Yes, he did.9 Q Did you meet with Stasi on February 12, 1973
10 and tell him --11 MR. DOWD: Objection.
12 THE COURT: Sustained.13 Q Did you have occasion to meet Frank Stasi in
14 the early part of February?
15 MR. DOWD: Objection.
16 THE COURT: Sustained.17 MR. ENGEL: May I have a moment, your Honor?
18 THE COURT: Sure.
19 (Pause.)20 MR. ENGEL: I have no further questions.
21 THE COURT: You may step down.22 (Witness excused.)
23 THE COURT: The record should reflect it is now
24 five minutes of five on a Saturday evening and it is cruel
25 and inhuman punishment.

2
3 All right, Mr. Marshal, take the jury. We
4 will see you Monday at 10 o'clock.

5 MR. SIEGEL: Your Honor, before the jury
6 leaves, I would like the record to indicate --

7 THE COURT: Before the record indicates any-
8 thing, come up here and tell me what you want the record
9 to indicate.

10 (At the bench.)

11 MR. SIEGEL: Your Honor, I would like the jury
12 to be advised that Detective Casella identified the
13 defendant Warren Robinson and not the defendant John
14 Springer.

15 MR. ENGEL: That is a conclusion the jury can
16 reach by itself.

17 THE COURT: They saw it and to add to it, Mr.
18 Engel started off his question which I would not permit
19 to be answered, "I asked you to identify the defendant
20 John Springer and you identified the defendant Warren
21 Robinson," and then he started to get up and say something.
22 It is clear. How much do you want?

23 MRS. ROSNER: Your Honor, I would move to
24 strike from the record the testimony of Detective Casella
25 regarding John Springer.

THE COURT: Can we let the jury go?

1 ks8

350:

2 MRS. ROSNER: I would like to strike the testi-
3 mony from the record of Al Casella and I would move to
4 strike the physical exhibits whose admissibility was
5 predicated on that testimony and I would ask that the jury
6 be admonished to disregard anything Agent Casella said
7 with respect to John Springer and I am not even sure that
8 kind of curative instruction is sufficient. Assuming
9 your Honor denies that, I would ask a curative instruc-
10 tion at this point --

11 THE COURT: Were you around when I talked to
12 the jury before about that?

13 MRS. ROSNER: I think you should tell them that
14 that testimony is unconnected and it should be stricken.
15

16 THE COURT: I am permitting it to stand and my
17 question is, didn't you hear me when I talked to them
18 before about the exhibits coming in and the evidence as
19 to Springer?

20 MRS. ROSNER: It must be the lateness.
21 I don't mean that. I think there are physical exhibits
22 which came in. I think they should be stricken com-
23 pletely.

24 THE COURT: And the answer is no. I will not
25 strike them.

(In open court.)

2 THE COURT: I do want to remind you about one
3 thing. This case has been going on for a while. I asked
4 you at the beginning to keep an open mind and I want you
5 to please keep an open mind. Don't even deliberate with
6 yourselves when you go back and needless to say, don't
7 talk about it to anybody else, all right?

8 Okay, ladies and gentlemen.

9 (Jury leaves room.)

10 THE COURT: I understand that over half the
11 lawyers here have a dinner date. Enjoy it. I will see
12 you Monday at 10 o'clock.

13 (Whereupon, an adjournment was taken to
14 Monday, February 25, 1974, at 10.00 o'clock a.m.)

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